Supreme Court, U. S.
FILED
JUN 24 1974
MICHAEL RODAK, JR., CLERK

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1973

No. 73-1924

JAMES R. MUNIZ and BROTHERHOOD OF TEAMSTERS AND AUTO TRUCK DRIVERS LOCAL NO. 70, IBTCHWA,
Petitioners,

VS.

ROY O. HOFFMAN, Director, Region 20, NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals
for the Ninth Circuit

VICTOR J. VAN BOURG,
DAVID A. ROSENFELD,
LEVY, VAN BOURG &
HACKLER,
45 Polk Street,
San Francisco, California 94102.
Attorneys for Petitioners.

PENNAU-WALSH PRINTING CO. - 562 MISSION STREET - SAN FRANCISCO, CA 94105

Subject Index

	Page
Opinion below	1
Jurisdiction	2
Questions presented	2
Rules and statutes involved	3
Preliminary statement	4
Statement of the case	6
Reasons why the writ should be granted	10
1. A labor organization and one of its officers may not be held in criminal and civil contempt of court orders where the court finds that the alleged contemnors were involved in a prohibited activity, absent proof that the accused were given actual notice of the injunction	10
2. The injunctive decrees in the District Court did not in specific terms forbid secondary boycott activity affecting deliveries, the conduct for which Muniz and Local 70 were held in contempt	13
3. Petitioners were entitled to a jury trial in a contempt arising out of an injunction growing out of a labor dispute	18
4. Petitioners were entitled to a jury trial in the criminal contempt proceeding where the district court imposed a fine of $25,000.00	24
Conclusion	27

Table of Authorities Cited

Cases

	Pages
Anderson v. Dunn, 19 U.S. (6 Wheat) 204 (1821)	27
Baldwin v. New York, 399 U.S. 66 (1970)	26
Bloom v. Illinois, 391 U.S. 194 (1968)	24, 25, 26
Brotherhood of Locomotive Firemen & Enginemen v. Bangor & Aroostook R.R. Co., 380 F.2d 570 (D.C. Cir. 1967), cert. denied 389 U.S. 327 (1967)	21
Brotherhood of Firemen v. United States, 411 F.2d 312 (5th Cir. 1969)	22
Cheff v. Schnackenberg, 384 U.S. 373 (1966)	24, 25
Columbia v. Cravens, 300 U.S. 617 (1937)	25
Duncan v. Louisiana, 391 U.S. 145 (1965)	19, 25
Ex Parte Lennon, 166 U.S. 548 (1897)	12
Frank v. United States, 395 U.S. 147 (1969)	26
Hitchman Coal & Coke Co. v. Mitchell, 245 U.S. 229 (1917)	12
In Re Debs, 158 U.S. 564 (1895)	12
In Re Puerto Rico Newspaper Guild Local 225, 476 F.2d 856 (1st Cir. 1973)	26
International Longshoremen's Ass'n v. Philadelphia Marine Trades Ass'n, 389 U.S. 64 (1967)	18
Madden v. Grain Elevator, Flour & Feed Mill Workers, 334 F.2d 1014 (7th Cir. 1964)	22
McGuire Shaft & Tunnel Corp. v. Local Union No. 1791, United Mine Workers, 475 F.2d 1209 (T.E.C.A. 1973)	20
Mitchell v. Barbee Lumber Co., 35 F.R.D. 544 (S.D. Miss. 1964)	23
N.L.R.B. v. Deena Artware, 261 F.2d 503 (6th Cir. 1958), rev'd on other grounds 361 U.S. 398 (1960)	17
N.L.R.B. v. Express Publishing Co., 312 U.S. 426 (1941)	17
N.L.R.B. v. Fruit & Vegetable Packers, 377 U.S. 58 (1964)	15
N.L.R.B. v. Red Arrow Freight Lines, 193 F.2d 979 (5th Cir. 1952)	21
N.L.R.B. v. Washington Aluminum Co., 376 U.S. 9 (1962)	23
Philadelphia Marine Trade Ass'n v. International Longshoremen's Ass'n, Local 1291, 368 F.2d 932 (3rd Cir. 1966), rev'd on other grounds, 389 U.S. 64 (1967)	21, 22, 23
Regal Knitwear Co. v. National Labor Relations Board, 324 U.S. 9 (1945)	12
Schauffler v. Local 1291, Int'l Longshoremen's Ass'n, 189 F.Supp. 737 (E.D. Pa. 1960), rev'd on other grounds 292 F.2d 182 (3rd Cir. 1961)	21
Terminal R.R. Ass'n v. United States, 266 U.S. 17 (1924)	17
United States v. R. L. Polk & Co., 438 F.2d 377 (6th Cir. 1971)	25, 26
United States v. United Mine Workers, 330 U.S. 258 (1947)	20, 27

Constitutions

United States Constitution:	
Art. III, Sec. 2, Sixth Amendment	3, 4
Amendment VI	4

Rules

Federal Rules of Civil Procedure, Rule 65(d)	3, 12, 13, 17, 18
Federal Rules of Criminal Procedure, Rule 42(b)	19

Statutes

Norris-LaGuardia Act of 1932 (29 U.S.C. §111) Section 11	20, 21
National Labor Relations Act (18 U.S.C.):	
Section 1	25, 26
Section 3692	2, 3, 19, 20, 21, 22, 23
62 Stat. 844	20
28 U.S.C.:	
Section 113(a)	23
Section 113(b)	23
Section 113(c)	23
Section 151	23
Section 152(a)	23

	Pages
Section 158(b)(4)(i)(ii)(B)	7
Section 160(h)	22
Section 160(l)	5, 7, 20
Section 164(c)	23
Section 402(g)	23
Section 1254(l)	2

Other Authorities

Tanner Motor Livery Ltd., 148 N.L.R.B. (1964):	
Page 1402	23
Page 1403	23
Title 18, Crimes and Criminal Procedures	21

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1973

No.

JAMES R. MUNIZ and BROTHERHOOD OF TEAMSTERS AND AUTO TRUCK DRIVERS LOCAL NO. 70, IBTCHWA,
Petitioners,

VS.

ROY O. HOFFMAN, Director, Region 20, NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR A WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit

Brotherhood of Teamsters and Auto Truck Drivers Local No. 70, IBTCHWA, and James R. Muniz, respectfully pray that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit.

OPINION BELOW

The opinion of the Court of Appeals is reported at 492 F.2d 929, and appears in the Appendix. No opin-

ion was rendered by the District Court for the Northern District of California.

JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit was entered on January 25, 1974. A timely petition for rehearing was denied on March 26, 1974. Jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

1. May a labor organization and one of its officers be held in criminal and civil contempt of court orders where the court finds that the alleged contemnors were involved in a prohibited activity, absent proof that the accused were given actual notice of the injunction?

2. May a labor organization and one of its officers be held in civil and criminal contempt of court orders which did not in specific terms forbid secondary activity relating to stopping of deliveries?

3. Whether petitioners, charged with criminal contempt for an alleged violation of an injunction issued under the National Labor Relations Act, are entitled to a trial by jury under 18 U.S.C. §3692, which provides that alleged contemnors are entitled to a jury trial in all contempt cases "arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute."

4. Whether Article III, Section 2 and the Sixth Amendment to the Constitution mandate a jury trial where a penalty of $25,000.00 is assessed against a labor organization in a criminal contempt proceeding.

RULES AND STATUTES INVOLVED

Rule 65(d) of the Federal Rules of Civil Procedure provides:

> *Form and Scope of Injunction or Restraining Order.*
>
> Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

Title 18, United States Code, Section 3692 provides:

> *Jury trial for contempt in labor dispute cases*
>
> In all cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed.

This section shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice nor to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders or process of the court.

United States Constitution, Article III, §2:

"The Trial of all Crimes, except in Cases of Impeachment, shall be by jury . . . ."

United States Constitution Amendment VI:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . . ."

PRELIMINARY STATEMENT

This petition is filed on behalf of Teamsters Local 70 and one individual, James Muniz, its President. The facts are essentially uncontroverted. Both Local 70 and James Muniz were found in civil and criminal contempt of two United States District Court orders. The two court orders of which they were found in contempt were:

1. An order of February 13, 1970 prohibiting secondary boycott activity around Pier 45A in San Francisco, and entered against Local 21 of the International Typographical Union and Locals 85 and 287 of the Teamsters; and

2. An order of April 28, 1970 entered against Local 21 of the I.T.U., prohibiting consumer picketing in Marin County.

Neither of these injunctions named Local 70 or Muniz, and neither Local 70 nor Muniz was ever a party. Of equal significance is the fact that both injunctions arose under a specialized statutory provision permitting a District Court to grant an injunction *only* against a party against whom an unfair labor practice charge has been filed by the National Labor Relations Board. Neither Muniz nor Local 70 was charged with unfair labor practices, as had been the other parties to the injunction.

In summary, (1) neither Local 70 nor Muniz was a party to the unfair labor practice charges which gave rise to the injunction proceedings under 29 U.S.C. §160(l); (2) neither was a party or had notice of the injunction proceedings; (3) neither was named or had notice of, or was even served with the injunctions; and (4) neither was connected in any way with Locals 21, 85, 287, or any other parties to the litigation.

The total lack of notice of the provisions of the injunctions, and the fact that Local 70 and Muniz were not parties, not named, and not served is the central procedural and due process issue presented in this petition. Such lack of notice cannot be swept away by the District Court judge's remark "that it would be ridiculous to hold that Mr. Muniz . . . did not know about this order affecting one of his kindred Teamster unions. . . ." (R.T. 2728).

The issues which petitioners raise relate not only to the lack of actual notice of these injunctive decrees, but also to the fact that the injunctions were narrow and limited in scope, and did not apply to the activity

which the court found was contemptuous. Finally, petitioners raise the fundamental issue as to whether they were entitled to a jury trial, both because this was contempt arising out of a labor dispute and because the Constitution of the United States requires such a jury trial.

STATEMENT OF THE CASE

In early January, 1970, Local 21 of the International Typographical Union went on strike against the Independent-Journal, a daily newspaper in San Rafael, Marin County, north of San Francisco. Picketing by the I.T.U. began at the Independent-Journal's San Rafael printing plant, but in late January, spread to Pier 45A of the Port of San Francisco, where newsprint from Canada destined for the Independent-Journal was being unloaded from barges. It was to be transported to the printing plant in San Rafael, located twenty-five miles north. Longshoremen members of Local 10 of the International Longshoremen's & Warehousemen's Union respected the picket lines and refused to unload the newsprint from the ships to the dockside. Members of two Teamsters' locals—Local 85 of San Francisco and Local 287 of San Jose—became involved in the dispute at the pier. Members of Local 85 who operated forklifts at the dock refused to cross the picket lines to load the newsprint onto trucks, and similarly, members of Local 287 refused to haul the cargo to San Rafael in their trucks (C.T. 430-438).

The National Labor Relations Board obtained a temporary restraining order under 29 U.S.C. §160(l) against Local 21's picketing of the dock on February 11, 1970, on the basis that the picketing was an illegal secondary boycott.[1] 29 U.S.C. §158(b)(4)(i)(ii)(B). Simultaneously, an order to show cause was obtained which required Local 21 and Teamsters Locals 85 and 287 to show cause two days later why a preliminary injunction should not issue. The preliminary injunction was issued February 13, 1970 against these three labor organizations only, "enjoining further picketing at the pier and further acts designed to cause the neutral employers to refuse delivery of newsprint." (Opinion, App. p. iii)[2]

The activity involving newsprint at Pier 45A ceased, and no further action concerning that case continued in the District Court.

Local 21 shifted the focus of its activity to Marin County, where consumer picketing of stores which advertised in the Independent-Journal was commenced. On April 28, 1970, Local 21 entered into a stipulation with the National Labor Relations Board to a temporary injunction which prohibited Local 21 from picketing certain named retail stores and "other firms which advertised in the Independent-Journal, where an object of the picketing is to cause customers of such firms to cease buying products not advertised in that

---

[1]This was Case C-70-306-LHB (N.D. Ca.)

[2]Local 10 of the I.L.W.U. became involved when it was served with the temporary restraining order on the day it was to expire—February 13.

paper." (C.T. 439-441).[3] This order was narrowly limited in its terms, and prohibited only attempts to induce customers not to shop at the various retail stores.

Throughout the summer and fall of 1970, the dispute between Local 21 and the Independent-Journal was quiescent. A new round of activity in Marin County erupted in the middle of October, and involved a new strategy on the part of Local 21. "The efforts broadened to boycott or quarantine San Rafael and all of Marin County, curtailing deliveries of all supplies, causing traffic tie-ups, and attempting to prevent delivery trucks from entering exit ramps from main highways to enter the city." (Opinion, App. A, p. v).

Litigation itself commenced in the federal courts on October 19. At that time, the National Labor Relations Board filed a petition seeking to hold the parties (Locals 21, 85, and 10, and their officers) to the previous injunctions in civil and criminal contempt. The petition claimed that "Respondents embarked upon a joint planned program and campaign to create a boycott of goods, materials, commodities and services. . . ." (C.T. 414). In contrast to the two previous situations, the effort organized by Local 21 was not directed at Pier 45A and the Independent-Journal newsprint, nor did it in any way involve a consumer boycott; rather, Local 21 sought simply to shut off truck deliveries to Marin County, the Independent-Journal, and persons doing business with the Independent-Journal.

[3]This is Case No. C-70-895-WTS (N.D. Ca.)

Local 21's efforts to block deliveries in Marin County came to involve members of Local 70, the petitioner herein. Although its jurisdiction is Alameda County, its drivers, in the course of their work, make deliveries in Marin County and elsewhere around the Bay Area. The evidence was overwhelming as to Local 21's campaign to block deliveries and otherwise enforce a secondary boycott. There is also evidence in the record that drivers from not only Local 70, but also from all over the Bay Area, refused to cross the picket lines or to make deliveries in Marin County during the week and a half preceding the filing of the instant contempt petition. Local 70's involvement in the boycott scheme was, according to the National Labor Relations Board, reflected by the presence of James Muniz, the President of Local 70, and business agents in Marin County during the week and a half in which Local 21 established its picket lines.[4]

Swept into the events as accused contemnors were petitioners herein: James Muniz and Teamsters Local 70. Local 70 and James Muniz had never been made parties to the previous litigation, and were never served with copies of the injunctions. They were now dragged into the contempt litigation, which lasted throughout the remainder of 1970 and into 1971. No evidence was ever submitted that either James Muniz or Local 70 was ever told of the existence of the injunctions or of their terms. Notwithstanding these facts, Local 70 and James Muniz were found guilty and assessed penalties in the same manner as the other

[4]Brief of the National Labor Relations Board to the Ninth Circuit, pp. 20-21.

respondents who had been parties to the litigation since its inception.

At the conclusion of the trial, Locals 70, 21, and 85 were found guilty of criminal contempt, and the similar fines were imposed upon each of them: $25,000.00, with $15,000.00 to be remitted.[5] Muniz and officers of the other locals were placed upon probation. In addition to criminal contempt, Locals 70, 21, 85, and Local 10 were found guilty of civil contempt, and a civil penalty was imposed in the amount of $21,208.15.

All four labor unions and the individual contemnors appealed to the Ninth Circuit. The Ninth Circuit consolidated the appeals and affirmed the District Court without modification or reservation.

Local 10 has filed a petition for certiorari in the instant case, No. 1813, October Term, 1973. Locals 85 and 21 and their officers have chosen not to file a petition for writ of certiorari.

REASONS WHY THE WRIT SHOULD BE GRANTED

1. **A LABOR ORGANIZATION AND ONE OF ITS OFFICERS MAY NOT BE HELD IN CRIMINAL AND CIVIL CONTEMPT OF COURT ORDERS WHERE THE COURT FINDS THAT THE ALLEGED CONTEMNORS WERE INVOLVED IN A PROHIBITED ACTIVITY, ABSENT PROOF THAT THE ACCUSED WERE GIVEN ACTUAL NOTICE OF THE INJUNCTION.**

Local 70 and James Muniz were first brought in as parties when they were served with the order to show cause in re contempt. The National Labor Relations

[5]The Court bifurcated the proceedings. The criminal contempt was tried first, and the evidence applied to the civil contempt proceedings.

Board did not attempt to prove that they had either been served with the injunctions, or that they had actual knowledge of their existence.[6]

Although the District Court entered a finding that all respondents "had notice and knowledge of [the injunction]" (C.T. 1253), this was based not upon proof as to all respondents, but upon assumption. The Court stated:

> ". . . and I am also quite satisfied that all of these unions had notice and knowledge of the two court orders in question; Typographical Union 21 and Typographical Union 85, by direct service, which is not substantially in dispute, and Teamsters Local No. 70, not by direct service of notice, but otherwise by circumstantial evidence, in this case which leads the Court to believe that it would be ridiculous to hold that Mr. Muniz, who was president of Local 70 and over there on the ground taking an active part in it in connection with people from the other labor unions, didn't know about this order affecting one of his kindred teamster unions, so there is no doubt at all in the Court's mind about the violation of the Court order and about the fact that it was a violation that was made with knowledge." (R.T. 2728).

This language of Judge Sweigert on January 22, 1971, in pronouncing judgment is a simple admission that neither Muniz nor Local 70 had actual notice of the language or the intent of the court decrees.

[6]Before the Ninth Circuit, the Board maintained that the Court could presume that Muniz and Local 70 knew of the injunction simply because others knew of the order. Brief of the Board, p. 46.

Although the Court of Appeals did not consider the notice problem which had been raised by appellants below, the opinion indicates that the Court of Appeals was confused: the Court assumed all parties before it had received direct notice of the injunction by being parties below prior to the initiation of contempt proceedings.[7]

The important issue raised in this petition is whether a labor organization and an individual may be held in contempt of court orders where actual notice is presumed because of the court's belief that they participated in the proscribed activities.

Within the bounds of Fed. R. Civ. P. 65(d), this Court has recognized injunctions which bind "successors and assigns" in addition to "parties to the action, their officers, agents, servants, employees and attorneys, and upon those persons in active concert or participation with them . . ." *Regal Knitwear Co. v. National Labor Relations Board,* 324 U.S. 9 (1945), *but cf. In Re Debs,* 158 U.S. 564, 570 (1895). Notwithstanding the fact that the injunction may by its terms bind others than the parties to the litigation, *actual notice* is a prerequisite to a finding of contempt, irrespective of whomever is named in the injunction. Rule 65(d). See *Ex Parte Lennon,* 166 U.S. 548 (1897). An injunction can operate only *in personam. Hitchman Coal & Coke Co. v. Mitchell,* 245 U.S. 229, 234 (1917).

---

[7]The Court of Appeals stated: "The language of the injunction was abundantly sufficient. Appellants were represented by counsel and no request for clarification was made." (Opinion, App. p. vi) This is of course patently untrue.

This Court must restrict the scope of injunctions within the plain meaning of Rule 65(d) to those with actual notice. Notwithstanding the cases that indicate that others than parties may be bound by an injunction, the rule still requires *actual notice.* The contrary result binds the entire world. Violation of the terms of an injunction without knowledge or notice simply subjects everyone to the penalties in contempt, irrespective of whether they have knowledge of the terms of the court decree. The most fundamental due process issue is thus raised by the imposition of civil and criminal penalties upon those who have no knowledge that their acts are, or might be, illegal.

---

2. THE INJUNCTIVE DECREES IN THE DISTRICT COURT DID NOT IN SPECIFIC TERMS FORBID SECONDARY BOYCOTT ACTIVITY AFFECTING DELIVERIES, THE CONDUCT FOR WHICH MUNIZ AND LOCAL 70 WERE HELD IN CONTEMPT.

Two injunctions were issued by the District Court, each of which much be considered in turn.

The injunction of February, 1970 was directed solely at picketing at Pier 45A, and was designed to permit the Independent-Journal to receive its Canadian newsprint. The injunction itself prohibited secondary activities with respect to three companies: Powell River-Alberni Sales, Ltd.; Star Terminal Co., Inc.; and Garden City Transportation Co., Ltd., which were involved in the transportation of the newsprint from Canada to the San Rafael printing plant.

The temporary injunction issued by the District Court enjoined further picketing at the pier, and in-

sofar as it is relevant to the present case, also enjoined the named unions: "their officers, representatives, agents, servants, employees, attorneys, and all members, persons and other labor organizations acting in concert or participation with them [from] inducing or encouraging any individual employed by . . . any motor carrier, lift truck service company, or other person . . . to engage in a . . . refusal in the course of his employment . . . to perform any service . . . or . . . threatening, coercing or restraining said employers, or any other persons . . . where in either case an object thereof is . . . to force or require [the newsprint supplier] or any other person to cease doing business with [the Independent-Journal]." (C.T. 427-428).

The injunction of April 28, to which only Local 21 stipulated, was similarly drawn from a narrow mold. (C.T. 439-441). The prohibitory language is contained in four paragraphs, all of which deal with consumer appeals (see C.T. 440-441). The first two paragraphs enjoin picketing at retail stores for the purpose of causing customers of such stores to "cease buying products not advertised in the Independent Journal" (*ibid.*). The third enjoins appeals by "handbills, oral statements, or otherwise, in conjunction with picketing," for the purpose of causing customers "not to *patronize* the stores" (C.T. 441) (emphasis added). The fourth paragraph, in summary form enjoins threats, coercion and restraint against retail stores, "by *consumer* picketing or by any like or related acts of conduct," for the purpose of requiring the stores

to cease advertising in the Independent Journal (*ibid.*) (emphasis added). There is nothing in the language of the injunction which touches upon the inducement of employees of suppliers and delivery drivers, activity which is both different from and governed by an entirely separate set of regulations than those which apply to consumer appeals. See *N.L.R.B. v. Fruit & Vegetable Packers,* 377 U.S. 58. (1964).

Only the February 13 injunction, served upon Locals 85, 287, 21, and 10[8], can by a tortured extraction of three words out of the more than seven hundred words used in the injunction, be construed to prohibit picketing aimed at delivery drivers. The words which must be extracted from the factual context of the injunction, which on its face prohibited only picketing at Pier 45A are those words which refer to "any other person. . . ." (C.T. 428). Within the context of this injunctive decree, these words cannot be expanded beyond their contextual meaning, to prohibit secondary boycott activity in Marin County which involved delivery drivers six months later.

Local 70, whose work jurisdiction is Alameda County, in the course of this labor dispute found its members delivering goods throughout the Bay Area, including San Francisco and Marin County, during

---

[8]Local 10 has filed a petition for certiorari, claiming that the service of the temporary restraining order of February 13 did not effect actual notice. See Docket No. 73-1813. Local 287 was not involved in the contempt proceedings. Locals 85 and 21, which had actual notice of the subsequent injunction, have not chosen to appeal from the decision of the court below.

October of 1970. The findings upon which the District Court based its contempt citation were based upon Local 70's alleged involvement in the *stopping of deliveries* to stores in Marin County which advertised in the Independent-Journal (C.T. 1249-62). The findings indicate that deliveries were stopped, with the purpose of "forcing or requiring the customers and suppliers of such persons to cease doing business with such persons in order to compel such persons to cease placing advertisements in, or otherwise cease doing business with, the Journal." (C.T. 1260). However, the injunctions themselves did not prohibit the stopping of deliveries, and it is here that the District Court erred.[9]

Although this issue was raised to the Court of Appeals below, the Court totally confused the specificity of these injunctions with respect to Local 70 and Muniz. The Court stated:

> "The language of the injunctions was abundantly sufficient. Appellants were represented by counsel, and no request for clarification was made." (Opinion, App., p. vi).

This was of course true with respect to Locals 21 and 85, but not true with respect to Local 70 and James Muniz, who were not parties to the litigation until October.

The injunctions of February 13 and April 28, 1970 cannot validly support contempt findings in this case

[9]The Board, in its brief to the Court of Appeals, indicated that it also understood these injunctions to be of limited impact. (Brief, pp. 7-12).

against Local 70 and Muniz, unless their language plainly and unambiguously informs those with notice of the injunction that they prohibit picketing and related inducement to stop drivers from making deliveries to stores which advertise in the Independent-Journal.

> "It is settled law that contempt will not lie for violation of an order of the court unless the order is clear and decisive, and contains no doubts about what is required to be done." *N.L.R.B. v. Deena Artware,* 261 F.2d 503, 509 (6th Cir. 1958) *rev'd on other grounds,* 361 *U.S.* 398 (1960); *N.L.R.B. v. Express Publishing Co.,* 312 U.S. 426, 433 (1941); and Fed. R. Civ. P. 65(d).

The scope of an injunctive order must be read in the light of the particular facts and issues which gave rise to its issuance.

> "In contempt proceedings for its enforcement, a decree will not be expanded beyond the meaning of its terms when read in the light of the issues and the purpose for which the suit was brought, and the facts found must constitute a plain violation of the decree so read." *Terminal R.R. Ass'n v. United States,* 266 U.S. 17, 29 (1924).

Local 21's dispute with the Independent-Journal cut a broad path. Locals 85, 287, and possibly 10 were the subject of the first injunctive decree. Local 21 subsequently stipulated to a further decree. When the picketing erupted in the blocking of deliveries in Marin County, designed to bring the Independant-Journal to the bargaining table, the District Court

swept into its contempt proceedings Local 70 and James Muniz. The plain meaning of the injunctive decrees was expanded to include stopping of deliveries, and Local 70 was dragged into this dispute by a court which simply failed to recognize the limits of its own decrees. This Court is called upon not only to correct the patent error of the court below, but also to revitalize Rule 65(d). In the words of this Court in *International Longshoremen's Ass'n v. Philadelphia Marine Trades Ass'n,* 389 U.S. 64, 76 (1967):

> "The judicial contempt power is a potent weapon. When it is founded upon a decree too vague to be understood, it can be a deadly one. Congress responded to that danger in requiring [in Rule 65(d) of the Federal Rules of Civil Procedure] that a federal court frame its orders so that those who must obey them will know what the court intends to require and what it means to forbid . . . . The most fundamental postulates of our legal order forbid the imposition of a penalty for disobeying a command that defies comprehension."

---

3. PETITIONERS WERE ENTITLED TO A JURY TRIAL IN A CONTEMPT ARISING OUT OF AN INJUNCTION GROWING OUT OF A LABOR DISPUTE.

Petitioners demanded a trial by jury on the allegations of criminal contempt. This was denied, and a court trial proceeded, in which the union and Muniz were found guilty and criminal penalties were assessed (R.T. 2731-34).

Petitioner submits that the denial of a trial by jury was a direct violation of the statutory requirement, 18 U.S.C. §3692, which provides in the relevant part:[10]

> In all cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed.

The importance of this statutory right to a trier of fact composed of a jury in a contempt matter arising out of a labor dispute cannot be overemphasized. Without a jury the judge is the lawmaker, the prosecutor, the injured party, and the trier of fact. Only a jury of twelve people can effectively insulate and protect an alleged contemnor from the wrath of the court particularly where the government itself is the initiating party. "Providing an accused with the right to be tried by a jury of his peers gave him an inestimable safeguard against a corrupt or overzealous prosecutor, and against a complaint, biased or eccentric judge." *Duncan v. Louisiana,* 391 U.S. 145, 156 (1965). This Court is simply asked to assure that right, which Congress granted in §3692.[11]

---

[10]See also F.R.Crim.P. 42(b), expressly providing for the right to a trial by jury in contempt cases where a statute so provides.

[11]The question presented in this case is now before the First Circuit in *In Re Union Nacional de Trabajadores,* No. 74-1073. The Court issued an order on March 15, 1974 directing the United States Attorney to file a brief on the issue, and further directed the National Labor Relations Board to file a brief *amicus curiae* prior to April 2, 1974. This matter was on writ of mandamus, and no final order had been issued as of this date.

The Court of Appeals below erroneously interpreted §3692 to be inapplicable to the variety of labor dispute involved herein. The Court read the words "case involving or growing out of a labor dispute" to exclude contempts of injunction issued pursuant to the National Labor Relations Act. The issue presented to this Court is whether §3692 was intended to exclude contempts arising in this type of labor dispute between unions involved, the employer, and the National Labor Relations Board which obtained the injunction pursuant to 29 U.S.C. §160(1).

As will become apparent, it not only defies common sense to impose such a restrictive gloss on the words "labor dispute," but deprives working people and their labor organizations of their right to a jury trial under circumstances where it is most essential.

Section 3692, which provides on its face for a jury trial, is derived from §11 of the Norris-LaGuardia Act of 1932. 29 U.S.C. §111. The original statute was recodified in 1948, and became part of the Criminal Code. 62 Stat. 844. While the original section of Norris-LaGuardia had been limited to contempts "arising under this [Norris-LaGuardia] Act," the new codification eliminated this restriction.[12] When Congress chose in 1948 to remove the restriction of applicability to only those labor disputes arising un-

[12]This Court correctly interpreted the previous statute, 29 U.S.C. §111, to be inapplicable to all labor disputes one year prior to the recodification in 1948. *United States v. United Mine Workers*, 330 U.S. 258, 298 (1947). Cf. *McGuire Shaft & Tunnel Corp. v. Local Union No. 1791, United Mine Workers*, 475 F.2d 1209, 1215, n.12 (T.E.C.A. 1973) (not a labor dispute).

der Norris-LaGuardia, Congress also chose to express within the statute those circumstances where the right was to be excluded.[13]

This 1948 recodification of the Norris-LaGuardia section accomplished two purposes: (1) the scope of §3692 was broadened to include *all* labor disputes, rather than just those arising under the Norris-LaGuardia Act; (2) the guarantee of a jury trial was recodified into Title 18, *Crimes and Criminal Procedures.*

Because the prior §11 of Norris-LaGuardia was recodified as part of the Criminal Code, several courts have ruled that §3692 does not require a jury trial in *civil* contempt proceedings. See, *Brotherhood of Locomotive Firemen & Enginemen v. Bangor & Aroostook R.R. Co.*, 380 F.2d 570, 579 (D.C. Cir. 1967); *cert denied*, 389 U.S. 327, 970 (1967); *Philadelphia Marine Trade Ass'n v. International Longshoremen's Ass'n, Local 1291*, 368 F.2d 932, 934 (3rd Cir. 1966), *rev'd on other grounds*, 389 U.S. 64 (1967); *Schauffler v. Local 1291, Int'l Longshoremen's Ass'n*, 189 F.Supp. 737 (E.D. Pa. 1960), *rev'd on other grounds*, 292 F.2d 182 (3rd Cir. 1961); and *cf. N.L.R.B. v. Red Arrow Freight Lines*, 193 F.2d 979, 980 (5th Cir. 1952) (Court of Appeals need not proceed with jury trial on contempt).

[13]The second paragraph of the statute expressly exempts the following:

> This section shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice nor to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders or process of the court.

In the *Philadelphia Marine Trade Ass'n* case, the Third Circuit recognized the strength of petitioner's position:

> ". . . Congress in 1948 took the subject matter of 3692 out of the Norris-LaGuardia Act and made it part of the criminal code. The natural inference to be drawn from that action is that Congress intended the protections provided by 3692 to be accorded to defendants in criminal proceedings and that section is simply not applicable in cases of civil contempt in which the court is only to obtain compliance with an order." 368 F.2d at 934.[14]

The Ninth Circuit, although citing the above named cases, cryptically ignored them because they "pertain principally to civil contempts." (Opinion App. p. x).[15] The Court chose rather to impose a gloss upon the words "labor dispute" used in §3692. There can be no quarrel that a labor dispute was involved. Local 21 was on strike against the Independent-Journal. The National Labor Relations Board alleged that Local 10 and Local 85 were engaged in secondary boycott activity, first at the San Francisco pier and subsequently at Marin County stores. Petitioners herein, Local 70 and James Muniz, were charged with

[14] *Accord, Brotherhood of Firemen v. United States,* 411 F.2d 312, 316-317 (5th Cir. 1969) ("The problem is formidable, with much on the Brotherhood's side.")

[15] The court below relied on *Madden v. Grain Elevator, Flour & Feed Mill Workers,* 334 F.2d 1014, 1020 (7th Cir. 1964), which arises in a civil contempt situation. The Seventh Circuit relied upon 29 U.S.C. 160(h), which exempts the National Labor Relations Act from the provisions of Norris-LaGuardia only in the *issuance* of injunctions or in the enforcement of Board orders befor the Courts of Appeal.

violations of the injunctions, alleging that they had engaged in unlawful secondary boycott activity with respect to deliveries in Marin County. On its face, the term "labor dispute" used in §3692 must apply to this type of activity.[16]

This gloss upon the term "labor dispute" contradicts the plain meaning of the statute. But more importantly, the term "labor dispute" is used interchangeably and throughout both the Norris-LaGuardia Act and the National Labor Relations Act. Cf. 29 U.S.C. §§151, 152(a) and 164(c) with 29 U.S.C. §113(a), (b), and (c), and 29 U.S.C. §402(g). The National Labor Relations Board itself has recognized that the definition of a labor dispute used in the National Labor Relations Act is "substantially the same" as used in Norris-LaGuardia. *Tanner Motor Livery Ltd.,* 148 N.L.R.B. 1402, 1403 (1964), and *N.L.R.B. v. Washington Aluminum Co.,* 376 U.S. 9, 15 (1962). The short of the matter is that the term "labor dispute" in §3692 is known both to Norris-LaGuardia and to the National Labor Relations Act. Both statutes deal with problems arising out of labor disputes in the commonly understood meaning of the term, as well as any specialized meaning that it might be given. Under these circumstances, it defies common sense and the literal meaning of §3692 to deny a jury trial in this criminal contempt

[16] The courts have not applied §3692 to contempts arising out of violation of the Fair Labor Standards Act, *Mitchell v. Barbee Lumber Co.,* 35 F.R.D. 544, 547 (S.D. Miss. 1964), or violations of orders to specifically perform a collective bargaining agreement. *Philadelphia Marine Trade Ass'n v. Int'l Longshoremen's Ass'n, supra,* 368 F.2d at 934.

proceeding arising out of a labor dispute. But more critically, this action derogates the established principle of interposing a jury between the contempt power of the court and the prosecution in labor disputes.

---

4. PETITIONERS WERE ENTITLED TO A JURY TRIAL IN THE CRIMINAL CONTEMPT PROCEEDING WHERE THE DISTRICT COURT IMPOSED A FINE OF $25,000.00.

The District Court imposed a fine of $25,000.00 upon Local 70, $15,000.00 of which was to be remitted if there were no subsequent violations of the court orders (R.T. 2731).

The issue, simply put, is whether the penalty imposed is so serious that a trial by jury is constitutionally required. With respect to criminal fines, this is an issue unsettled by this Court, and with respect to which the Courts of Appeals are in disagreement.

This Court has delineated the circumstances under which a trial by jury is constitutionally mandated in criminal contempt proceedings against persons. In *Cheff v. Schnackenberg,* 384 U.S. 373 (1966), the Court held that the Constitution does not require a jury trial where the accused individual is sentenced to six months' imprisonment. This doctrine was applied to the states in *Bloom v. Illinois,* 391 U.S. 194 (1968), to require the state to grant a jury trial where the contemnor was sentenced to a prison term of two years. Where there was no maximum penalty imposed by the statute, the trial court must "look to the penalty imposed as the best evidence of the seriousness of the offense." *Id.,* 391 U.S. at 211. Where the offense is serious, a jury trial is required; where it is petty, it is not. *Duncan v. Louisiana,* 391 U.S. 145, 162 (1968). Unwilling to "leave the federal courts at sea in instances involving . . . sentences," this Court, in the exercise of its "supervisory power, and under the peculiar powers of federal courts to revise sentences in contempt cases, [ruled] that sentences exceeding six months for criminal contempt may not be imposed by federal courts absent a jury trial or waiver thereof." *Cheff v. Schnackenberg, supra,* 384 U.S. at 380. The Court recognized that this six-month line was imposed by 18 U.S.C. §1, which provides in relevant part:

> "Any misdemeanor, the penalty for which does not exceed imprisonment for a period of six months or a fine of not more than $500, or both, is a petty offense."

The lower federal courts have now been clearly instructed in the right to a jury trial in criminal contempt situations where sentences are imposed. The court below recognized that "[w]here the contemnor is a corporation, association, union or other artificial person, and a fine is the ordinary punishment, the rules become obscure." (Opinion App. p. xvi). Where a fine is imposed, the rules are not only obscure, but the Courts of Appeals are in conflict. The Sixth Circuit has ruled, relying on *Duncan v. Louisiana, supra,* and *Columbia v. Cravens,* 300 U.S. 617 (1937), that the $500 limit of 18 U.S.C. §1 applies. *United States v. R. L. Polk & Co.,* 438 F.2d 377 (6th Cir.

1971).[17] The Court reasoned that it must apply "objective criteria," 438 F.2d at 380, and that the standard definition in 18 U.S.C. §1 defined the distinction between petty and serious crimes in the federal courts. *Accord, Frank v. United States,* 395 U.S. 147 (1969); and *Baldwin v. New York,* 399 U.S. 66, 73, n. 21 (1970). The Court of Appeals below rejected without comment the Sixth Circuit's holding,[18] and simply found that "the judgment of the District Court was [not] constitutionally prohibited." (Opinion App., p. xvi).

The importance of this issue is again obvious.

> "[O]ver the years in the federal system, there has been a recurring necessity to set aside punishments for criminal contempt as either unauthorized by statute or too harsh. This course of events demonstrates the unwisdom of investing the judiciary with completely untramelled power to punish contempt, and makes clear the need for effective safeguards against that power abuse." *Bloom v. Illinois, supra,* 391 U.S. at 207.

When a local union such as Local 70, or a large corporation such as R. L. Polk & Co.,[19] can be subject to large fines without a trial by jury in criminal contempt circumstances is an issue which desperately

[17]The First Circuit has indicated its support for the Sixth Circuit's position. *In Re Puerto Rico Newspaper Guild Local 225,* 476 F.2d 856, 858 (1st Cir. 1973).

[18]See App. p. vi at footnote 8.

[19]In the *Polk* case, the Court noted that the $35,000.00 fine was not significant in light of the contemnors' assets. In this case, the Court of Appeal below considered that the fine imposed "might be a 'serious' penalty. . . ." (App., p. xvi). The District Court, however, made no finding on this issue, nor was it considered.

needs resolution. See *United States v. United Mine Workers,* 330 U.S. 258, 303-304 (1947) (excessive fine), and *Anderson v. Dunn,* 19 U.S. (6 Wheat) 204, 231 (1821).

CONCLUSION

The fundamental issue raised in this petition is the extent to which government by injunction in labor disputes is to be countenanced. James Muniz and Local 70 were simply never given notice of the court decrees prohibiting unfair labor practices. The decrees themselves did not actually prohibit the activity of which petitioners were convicted. And finally with respect to the injunctive power of the District Courts, these alleged contemnors were deprived of the fundamental right of a trial by jury in a situation where that right plays a central role in basic due process.

For all the above reasons, this Petition for Writ of Certiorari should be granted.

Dated, San Francisco, California,
June 19, 1974.

VICTOR J. VAN BOURG,
DAVID A. ROSENFELD,
LEVY, VAN BOURG &
HACKLER,
Attorneys for Petitioners.

(Appendix Follows)

Appendix

United States Court of Appeals
for the Ninth Circuit

Roy O. Hoffman, Director, Region 20, NLRB, Plaintiff-Appellee, v. International Longshoremen's & Warehousemen's Union, Local No. 10, Defendant-Appellant.	No. 71-1818 No. 71-1819 No. 71-1820 No. 71-1821
Roy O. Hoffman, Director, Region 20, NLRB, Plaintiff-Appellee, v. Brotherhood of Teamsters & Auto Truck Drivers Local No. 70, IBTCWHA, & James R. Muniz, Defendants-Appellants.	No. 71-1822 No. 71-1823 No. 71-1827
Roy O. Hoffman, Director, Region 20, NLRB, Plaintiff-Appellee, v. San Francisco Typographical Union Local No. 21, etc., Don Abrams; Brotherhood of Teamsters & Auto Truck Drivers Local No. 85, IBTCWHA; & Timothy J. Richardson, Defendants-Appellants.	No. 71-1828 No. 71-1829 No. 71-2073

[January 25, 1974]

Appeals from the United States District Court
for the Northern District of California

Before: MERRILL and TRASK, Circuit Judges, and KELLEHER,* District Judge

TRASK, Circuit Judge:

This is an appeal from two judgments holding appellant unions and union officers guilty of civil contempt and a portion of the appellants guilty of criminal contempt. The contempt actions were based upon alleged violations of two separate injunctions issued by the District Court under section 10(1) of the National Labor Relations Act, as amended, 29 U.S.C. § 151, *et seq.*, hereinafter called the Act. Appeal is taken pursuant to 28 U.S.C. § 1291. We affirm.

California Newspapers, Inc., doing business as San Rafael Independent Journal (Journal), is engaged at San Rafael, California, in publishing a daily newspaper of general circulation in Marin County called *The Independent Journal.* Jurisdictional requirements of the Act with respect to gross revenues and interstate commerce are clearly present.

Since on or about January 7, 1970, a labor dispute had existed between the Journal and San Francisco Typographical Union No. 21 (Local 21), International Typographical Union, AFL-CIO.[1] In that month a

*Honorable Robert J. Kelleher, United States District Judge for the Central District of California, sitting by designation.

[1]In addition to the consolidated appeals from the District Court's orders finding appellants guilty of civil and criminal contempts which are at issue here, the unfair labor practice cases before the NLRB arising out of this controversy proceeded separately to final hearing and decision. San Francisco Typographical Union No. 21, 188 N.L.R.B. No. 108, 76 L.R.R.M. 1627 (1971). Local 21 and certain of its officers were cited for civil contempt in a companion case. The Board petitioned this court for enforcement of its order and Local 21 appealed the civil contempt citation. Those two appeals were consolidated, argued and decided by this court in NLRB v. San Francisco Typographical Union No. 21, 465 F.2d 53 (9th Cir. 1972).

strike was called against the newspaper and picketing began to the Journal's San Rafael publishing plant.

On February 11, 1970, the Regional Director of the National Labor Relations Board (the Board) filed with the District Court a petition for a temporary injunction pursuant to section 10(1) of the Act, against Local 21, Teamsters Local 85 and Teamsters Local 287. The petition was predicated upon a charge filed by the Journal that the named respondents were violating section 8(b)(4)(B) of the Act by engaging in secondary boycotts. Particularly they were picketing and inducing employees of various neutral employers at the Port of San Francisco to interfere with and prevent the delivery of newsprint to the Journal. After a hearing on February 13, 1970, at which the respondents presented no evidence, a temporary injunction was issued against all respondents enjoining further picketing at the pier and further acts designed to cause the neutral employers to refuse delivery of newsprint. On February 13, 1970, a Deputy United States Marshal served a copy of a Temporary Restraining Order identical with the Temporary Injunction on Longshoremen's Union, Local 10 which represented longshore employees at the Port of San Francisco. The injunction was based upon a finding that all three locals had engaged in a joint secondary boycott plan.

On April 28, 1970, the Board filed a second petition charging that Local 21 was conducting illegal secondary boycott activities at entrances to various retail stores in the vicinity to induce the public not to patronize the stores because they were advertising in the Journal. Local 21 stipulated that it would not contest the facts charged, waived a hearing and consented to the issuance of an injunction forthwith as prayed for. The court considered the petition and issued the injunction on April 28, 1970.

Both the February 13 injunction and that of April 28 were directed to the named respondents and "their officers, representatives, agents, servants, employees, attorneys, and all members, persons and other labor organizations acting in concert or participation with them or any of them."

Notwithstanding the April 28 injunction Local 21 continued to picket the retail stores in substantially the same way. On May 28, 1970 after hearing, the court found Local 21 and certain of its officers and agents including its vice-president DeMartini and organizer Abrams in civil contempt and directed that they purge themselves, inter alia, by fully complying with the injunction order. The court retained jurisdiction for the purpose of imposing a compensatory fine and considering a compliance fine.

Despite the civil contempt order, the tempo of illegal activities in violation of both injunctions increased, with other locals participating. These included Longshoremen's Local No. 10; Teamsters No. 70 and James R. Muniz, its president; and Teamsters No. 85 and Timothy Richardson, its business manager. The effort broadened to boycott or quarantine San Rafael and all of Marin County, curtailing deliveries of all supplies, causing traffic tie-ups and attempting to prevent delivery trucks from entering exit ramps from main highways to enter the city.

On October 10, 1970, the petition in the present case was filed seeking adjudication in civil and criminal contempt for violations of both the February 13 injunction and that of April 28. At the outset of the hearing in the District Court the criminal and the civil cases were severed with the criminal to be tried first. A request for a jury trial in the criminal case was denied. On December 24, 1970, at the close of the hearing the District Court determined that the allegations of the petition had been proved beyond a reasonable doubt with respect to union appellants Local 21, Teamsters Local 70 and Teamsters Local 85, and individual appellants Abrams, Muniz and Richardson, and that those appellants were guilty of criminal contempt. The court also found that the allegations of civil contempt had been established by a preponderance of the evidence as to all of those guilty of criminal contempt, plus Longshoremen's Local 10 and individual appellant DeMartini. The order of December 24 with respect to the civil action contains certain standard purgation requirements in the way of notices, and imposes a compliance fine of $7,500 a day against the unions and $100 per day against individual appellants for each day such individual fails

to comply with the order. Finally, it retains jurisdiction for the purpose of imposing a compensatory fine.

In the criminal case a fine was levied against each of the three unions in the sum of $25,000 with a provision for remission of $15,000 of each fine if the court is satisfied at the end of one year with the appellants' compliance with the court's orders. Sentence of individual defendants was suspended and each was put on probation for one year. If probation was violated, each would subject himself to the power of the court to impose a sentence of imprisonment up to, but not exceeding, six months. A compensatory fine was later imposed in the sum of $21,208.15 in the civil proceeding.

Appellants raise a number of questions directed at the sufficiency and admissibility of evidence adduced during the proceeding, the inadequacy of the language of the temporary injunctions to put appellants upon notice of the activities within the scope of the injunctions, and the technical deficiency of certain of the pleadings. We have examined each in view of the importance of the proceeding and find that each is without substantial merit. Without detailing the evidence, which was voluminous, it clearly justified and supported the court's findings as to both criminal and civil contempts. The language of the injunctions was abundantly sufficient. Appellants were represented by counsel and no request for clarification was made. On the contrary appellants through their house papers boasted they were going to continue despite the court's injunctions. The same ap-

plies to the argument of the lack of precision of the allegations of the petition for an adjudication of criminal contempt. Appellants and their attorneys were fully apprised of the charges; they deliberately chose to risk not to obey them.

Where the purposes of issuing the citation for contempt is remedial in scope in order to enforce compliance with the court's order, the contempt is civil. *Shillitani v. United States,* 384 U.S. 364, 368-70 (1966). In such cases a jury trial is not required. *Shillitani, supra; Cheff v. Schnackenberg,* 384 U.S. 373, 377 (1966). No request for a jury trial was made in the civil contempt cases here, Where a fine is imposed or the purpose is punishment, the contempt is criminal. *Penfield Co. of California v. SEC,* 330 U.S. 585, 590-91 (1947); *Nye v. United States,* 313 U.S. 33 (1941). It is from the criminal contempt proceedings which imposed fines and probation that complaint is made of the denial of a jury trial.

The court has jurisdiction to grant injunctive relief or temporary restraining orders in order to protect the public welfare or preserve the status quo pending a hearing or to enforce its orders. We pointed out in *San Francisco-Oakland Newspaper Guild v. Kennedy,* 412 F.2d 541, 544, 545n.3 (9th Cir. 1969):

> "All that is required under Sec. 10(1) for a regional director to petition for such an injunction is reasonable cause to believe an unfair labor practice is being committed. The preliminary injunction should be granted by the court if the court finds that the factual allegations and the propositions of law underlying the regional di-

> rector's petition are not insubstantial and frivolous so that he has reasonable cause for believing the Act has been violated, and if the court finds that injunctive relief is appropriate. On appeal, review is limited to a determination of whether the district court's findings are clearly erroneous.
> . . . .
> "Neither the district court nor this court is called upon to decide whether in fact a violation of the Act has been committed; the ultimate determination with respect to this question is reserved exclusively for the Board, subject to review by the courts of appeals pursuant to Sec. 10(e) and (f) of the Act . . . ."

The court must also have the power to enforce its orders if the Act is to be effective. *Madden v. Grain Elevator, Flour & Feed Mill Workers,* 334 F.2d 1014 (7th Cir. 1964), *cert. denied,* 379 U.S. 967 (1965); *Evans v. Typographical Union,* 81 F.Supp. 675 (S.D. Ind. 1948).

Here the District Court, acting upon the petition of the Board, did grant injunctive relief under Section 10(1) of the Act, 29 U.S.C. §160(1).[2] When that injunctive relief was disregarded civil sanctions were imposed and when the court's orders were willfully flaunted and disobeyed criminal penalties followed.

---

[2] "Whenever it is charged that any person has engaged in an unfair labor practice . . . the officer or regional attorney . . . shall . . . petition any United States district court . . . for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law . . . ." 29 U.S.C. § 160(1).

In support of their contention that they were erroneously denied a jury trial, appellants rely upon 18 U.S.C. §3692, which reads as follows:

> "In all cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed."

Appellants acknowledge that the language represents a codification of the Norris-LaGuardia Act, in which the language granting contempt powers was originally limited to "all cases arising under this [Norris-LaGuardia] Act." Sec. 11, 29 U.S.C. §111. *See United States v. United Mine Workers,* 330 U.S. 258, 298 (1947). It is argued that a revision of 1948 (Act of June 25, 1948, ch. 645, 62 Stat. 701-02, 844), which provided that the contempt power extended to "all cases . . . arising under the laws of the United States . . .", necessarily is all inclusive and thus envelops within its scope the present NLRA controversy. Thus, the argument concludes, a jury is required if requested.

The thesis of appellants is too broad. Section 3692 does not stop when it refers to "all cases of contempt arising under the laws of the United States . . . ." It limits the definition by adding after the words "laws of the United States," the words "governing the issuance of injunctions or restraining or-

ders in any case involving or growing out of a labor dispute." The purposes of the Norris-LaGuardia Act to limit and restrict the equitable powers of the courts to intervene in labor disputes between private employers and unions are not the same as the powers involved in the administrative scheme of the Labor Management Relations Act and its amendments. There is no reason to believe that Congress intended its grant of equitable powers to district courts as embodied in section 10(1) of the Act, 29 U.S.C. §160(1), to be repealed by the recodification of section 11 of the Norris-LaGuardia Act, 29 U.S.C. §111, into 18 U.S.C. §3692. *Brotherhood of Local Firemen & Enginemen v. Bangor & Aroostook R.R. Co.*, 380 F.2d 570, 580 (D.C. Cir.), *cert. denied*, 389 U.S. 327 (1967); *Madden v. Grain Elevator, Flour & Feed Workers*, 334 F.2d 1014, 1020 (7th Cir. 1964). *See Schauffler v. United Association of Journeymen*, 230 F.2d 572 (3d Cir.), *cert. denied*, 352 U.S. 825 (1956); *NLRB v. Red Arrow Freight Lines*, 193 F.2d 979 (5th Cir. 1952).

Although the authorities cited pertain principally to civil contempts we hold to the view that the jurisdiction of the district courts to enforce their orders made under section 10(1) of the Act applies as well to criminal contempts, and that a jury trial is not compelled by virtue of the provisions of 18 U.S.C. §3692.

Having thus concluded, it remains necessary to consider appellants' contention that the court erred in not summoning a jury upon request because of the

seriousness of the violations charged and the resulting weight of the penalties imposed. The trial court imposed two penalties in the criminal proceeding. As to the individuals it found guilty of criminal contempt, it suspended sentence and placed them on probation for one year, determining that if the condition of probation was broken they would subject themselves to the power of the court to impose a sentence of imprisonment of "up to but not exceeding, six months." It appears well established that jury trials are not constitutionally required in those cases where the penalty does not exceed six months' imprisonment. *Bloom v. Illinois*, 391 U.S. 194 (1968); *Cheff v. Schnackenbery*, 384 U.S. 373 (1966); *United States v. Barnett*, 376 U.S. 681 (1964); *Green v. United States*, 356 U.S. 165 (1958). *See also Duncan v. Louisiana*, 391 U.S. 145 (1968).

Cheff, supra, was an instance of criminal contempt of an order of the Court of Appeals of the Seventh Circuit arising out of proceedings before the Federal Trade Commission. Cheff was found guilty and sentenced to six months' imprisonment. His petition for certiorari was granted with review limited to the question whether after a denial of a demand for a jury, a sentence of imprisonment of six months was constitutionally permissible under Article III and the Sixth Amendment.[3] The Court held that it was.

---

[3] "The Trial of all Crimes, except in Cases of Impeachment, shall be by jury . . . ." U.S. Const., art. III, § 2.
"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . . ." *Id.*, amend. VI.

It stated that it was "constrained to view the proceedings" as "equivalent to a procedure to prosecute a petty offense" which under its decisions did not require a jury trial.[4] Clearly, then, it appears that sentences of imprisonment for a term of six months or less are neither constitutionally impermissible nor proscribed by the Supreme Court under its supervisory power over the inferior federal courts. We therefore hold that the criminal penalties meted out to the individual here in the form of suspended sentences and probation are not constitutionally invalid.

As to the appellant unions (Local 21, Local 85 and Local 70), each had imposed upon it a fine of $25,000. Payment of $15,000 of that sum was suspended for one year and was then to be remitted to the union upon a determination by the court that the union had not engaged in any further violations of injunction orders. The unions contend here that the amount of the fines establish them as other than "petty" in nature and therefore the denial of their requests for a jury trial was erroneous. The basis of this ar-

[4]The Court referred to a portion of 18 U.S.C. § 1 (1964 ed.), "[a]ny misdemeanor, the penalty for which does not exceed imprisonment for a period of six months is a 'petty offense.'" 384 U.S. at 379.

It also concluded its opinion by an expression of its point of view in recognition of its responsibility for "effective administration" of the federal courts, stating:

> "Therefore, in the exercise of the Court's supervisory power and under the peculiar power of the federal courts to revise sentences in contempt cases, we rule further that sentences exceeding six months for criminal contempt may not be imposed by federal courts absent a jury trial or waiver thereof." *Id.* at 380.

gument is that the full text of 18 U.S.C. §(1)3 provides:

> "Any misdemeanor, the penalty for which does not exceed imprisonment for a period of six months or a fine of not more than $500, or both, is a petty offense."

Since the Court in *Cheff* relied upon this statute for its characterization of a six months' maximum imprisonment as being "petty," appellants argue that the statute must necessarily determine the $500 fine as being the maximum fine which could permissibly be characterized as "petty" and thus imposed without a jury trial or a waiver of jury. Although there is a syllogistic allure in the argument, decisions subsequent to *Cheff* cast doubts upon the contention's validity. *Bloom v. Illinois, supra,* involved a conviction in an Illinois state court for criminal contempt and a sentence to imprisonment of 24 months as the penalty. The defendant's timely demand for a jury trial had been refused, and his conviction affirmed. Certiorari having been granted, 386 U.S. 1003 (1967), the Court reexamined the limitations of the rule that criminal contempts could be tried without a jury. *Duncan v. Louisiana, supra,* decided the same day as *Bloom,* had held that the right to a jury trial extended to the states.

In *Bloom,* the Court recounted that in *Green v. United States, supra,* it had held to be constitutionally permissible summary trials without a jury in all contempt cases, based upon common law rules and upon the concept that such power in the courts was consid-

ered essential to the proper and effective administration of justice. It then pointed out that *Barnett, supra,* had signalled a possible change of view in the event of a severe punishment in a criminal contempt case. Two years later, in 1966, *Cheff, supra,* held that six months' imprisonment was a petty and not a severe punishment and did not require a jury. The Court in Bloom stated that it "accept[s] the judgment of *Barnett* and *Cheff* that criminal contempt is a petty offense unless the punishment makes it a serious one."[5] 391 U.S. at 198. As to when the offense ceases to be "petty" and becomes "serious" the Court concluded:

> "In *Duncan* we have said that we need not settle 'the exact location of the line between petty offenses and serious crimes' but that 'a crime punishable by two years in prison is . . . a serious crime and not a petty offense.' " *Id.* at 211.

In this plethora of discussion establishing and reexamining rules as to when a jury trial is required, there is hardly a word spoken about the line at which the measure in dollars of a fine causes the contempt to cease being "petty" and to become "serious." Certainly we cannot understand *Cheff* as holding that the sum of $500 constitutes that line simply because it uses 18 U.S.C. §1(3) to express a point of division between permissible and impermissible terms of im-

[5]The opinion in *Bloom* does not comment on the statement in *Cheff* that "sentences exceeding six months for criminal contempt may not be imposed by federal courts absent a jury trial or waiver thereof." 384 U.S. at 380. The implication is that such sentences are considered serious.

prisonment at which a jury is required.[6] A deprivation of his liberty for a period of more than six months could certainly be serious to any individual, whereas a fine of $500 to a large corporation or to a large union might have no deterrent or punitive effect at all.[7]

A distillate of the holdings of the more modern decisions of the Supreme Court on the question of the right to trial by jury in a criminal proceeding leads us to believe that if there is an existing statute which authorizes the imposition of a penalty of more than six months imprisonment, the penalty is not a "petty" one but a "serious" one and a jury or waiver thereof is required. *Duncan v. Louisiana, supra.* If the criminal proceeding is in contempt with no statutory penalty but an open-ended penalty resting on the court's discretion, a hindsight determination is made upon review to determine whether the offense was "petty" or "serious" based upon the severity of the punishment. If the penalty imposed is six months imprisonment or less, then the offense was a "petty" one and

[6]In *Duncan,* the Court pointed out that because there was no statute involved in *Cheff* defining the penalty for criminal contempt in terms of months or years of imprisonment, the Court was forced to look at the penalty actually imposed as the best evidence of the seriousness of the offense. 391 U.S. at 162 n. 35.

[7]It is interesting to note that in *Cheff,* his codefendant Holland Furnace Co. was fined $100,000. Both Cheff and the corporation petitioned for certiorari. The petition of Cheff was granted and in the opinion the question of petty versus non-petty measured by length of imprisonment was discussed at length. The petition for certiorari of the corporation was denied and the Court in *Cheff* did not discuss a measure of dollars which might define a fine as being petty or serious.

no jury was required. *Cheff v. Schnackenberg, supra; Duncan v. Louisiana,* 391 U.S. 145, 162 n.35.

Where the contemnor is a corporation, association, union or other artificial person and a fine is the ordinary punishment, the rules become obscure. The Court has never said that while a $500 fine marks the contempt as being "petty" under 18 U.S.C. §1(3) with no jury required, a fine of $501 labels it as "serious" with the necessary consequence that a jury must have been enpaneled.[8] A fine which might under all of the circumstances constitute only a slap on the wrist of one artificial entity might be a "serious" penalty to another.[9] Accordingly, we can go no further than to decide this case, and upon that basis we do not find that the judgment of the District Court was constitutionally prohibited.

The judgment is therefore affirmed.

[8]We note *United States v. R. L. Polk & Co.*, 438 F.2d 377 (6th Cir. 1971), to the contrary but are not persuaded by it.

[9]The six month-$500 provision of 18 U.S.C. § 1(3) defining the limits of "petty" offenses became law in 1930. Act of Dec. 16, 1930, ch. 15, 46 Stat. 1029. While the value of personal freedom has not depreciated in the intervening period the same cannot be said either of the value of the dollar or of the growth in dollars of the assets of large organizations.

United States Court of Appeals
for the Ninth Circuit

Roy O. Hoffman, Director, Region 20, NLRB, Plaintiff-Appellee, v. International Longshoremen's & Warehousemen's Union, Local No. 10, Defendant-Appellant.	No. 71-1818 No. 71-1819 No. 71-1820 No. 71-1821
Roy O. Hoffman, Director, Region 20, NLRB, Plaintiff-Appellee, v. Brotherhood of Teamsters & Auto Truck Drivers Local No. 70, IBTCWHA, & James R. Muniz, Defendants-Appellants.	No. 71-1822 No. 71-1823 No. 71-1827 DC 70-895 WTS

[Mar. 26, 1974]

Before: MERRILL and TRASK, Circuit Judges, and KELLEHER,* District Judge

ORDER

The panel as constituted in the above case has voted to deny the petitions for rehearing and to reject the suggestions for rehearing en banc.

*Honorable Robert J. Kelleher, United States District Judge for the Central District of California, sitting by designation.

The full court has been advised of the suggestions for en banc hearings, and no judge of the court has requested a vote on the suggestions for rehearing en banc. Fed. R. App. P. 35(b).

The petitions for rehearing are denied and the suggestions for rehearing en banc are rejected.

Supreme Court, U. S.
FILED
AUG 29 1974
MICHAEL RODAK, JR., CLERK

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1973

No. 73-1924

JAMES R. MUNIZ and BROTHERHOOD OF TEAMSTERS AND AUTO TRUCK DRIVERS LOCAL NO. 70, IBTCHWA,
Petitioners,

vs.

ROY O. HOFFMAN, Director, Region 20,
NATIONAL LABOR RELATIONS BOARD,
Respondent.

SUPPLEMENTAL BRIEF TO A PETITION FOR A WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit

VICTOR J. VAN BOURG,
DAVID A. ROSENFELD,
LEVY, VAN BOURG & HACKLER,
45 Polk Street,
San Francisco, California 94102,
Attorneys for Petitioners.

PERNAU-WALSH PRINTING CO. - 562 MISSION STREET - SAN FRANCISCO - CA 94105

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1973

No. 73-1924

JAMES R. MUNIZ and BROTHERHOOD OF TEAMSTERS AND AUTO TRUCK DRIVERS LOCAL NO. 70, IBTCHWA,
Petitioners,

VS.

ROY O. HOFFMAN, Director, Region 20,
NATIONAL LABOR RELATIONS BOARD,
Respondent.

SUPPLEMENTAL BRIEF TO A PETITION FOR A WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit

---

Petitioners raised two issues regarding the District Court's denial of a jury trial in the criminal contempt context. With regard to the right to a jury trial where a fine greater than $500.00 is imposed, a conflict in the Circuits existed at the time the petition was filed.

The second issue concerns the statutory right to a jury trial in "all cases of contempt . . . involving or growing out of a labor dispute." 18 U.S.C. § 3692.

At the time the petition was filed, the First Circuit had this issue under consideration in *In Re Union Nacional de Trabajadores,* No. 74-1073. On August 14, 1974, the First Circuit ruled that jury trials are mandated by this statute.* In reaching a conclusion contrary to the court below, the First Circuit noted that the Ninth Circuit's opinion did not reveal "sufficient analysis underlying the conclusion to be preclusive or persuasive." App., p. vii. A copy of that Opinion and the dissent are attached for the Court's convenience as an Appendix.

Two critical jury trial issues are presented by this petition. The Circuits are directly in conflict on both issues, and the petition should be granted.

Dated, San Francisco, California,
August 21, 1974.

VICTOR J. VAN BOURG,
DAVID A. ROSENFELD,
LEVY, VAN BOURG & HACKLER,
Attorneys for Petitioners.

(Appendix Follows)

---

*The First Circuit also reaffirmed its prior holding in *In re Puerto Rico Newspaper Guild Local 225*, 476 F.2d 856 (1973) which is contrary to the Ninth Circuit's ruling on the first jury trial.

Appendix

United States Court of Appeals
For the First Circuit

No. 74-1073 Original

UNION NACIONAL DE TRABAJADORES, ET AL.,
Petitioners.

ON PETITION FOR WRIT OF MANDAMUS FROM THE
UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF PUERTO RICO

Before COFFIN, *Chief Judge,*
MCENTEE and CAMPBELL, *Circuit Judges.*

August 14, 1974

COFFIN, Chief Judge. Petitioners, a union and its officers, cited for criminal contempt arising out of alleged violations of an injunction granted pending decision on an unfair labor practice charge, sought mandamus to compel the holding of the trial in Spanish and before a jury. We denied extraordinary relief as to the language issue and asked for briefs as to the jury trial issue. The petitioners, the National Labor Relations Board, the United States Attorney, and two amici have submitted briefs.

The present issue is whether this court should grant a writ of mandamus to compel the district court to grant a jury trial to the Union Nacional de Trabaja-

dores and its officers (hereinafter UNT) on an alleged criminal contempt. The alleged contempt arose out of a district court order, pursuant to section 10(j) of the National Labor Relations Act (hereinafter NLRA), 29 U.S.C. § 160(j), enjoining the UNT from striking against Construcciones Werl, Inc., without complying with the notice and waiting requirements of section 8(d) of the NLRA. The order was entered on August 30, 1973, and on September 18 the NLRB and the U. S. Attorney requested the court to institute criminal contempt proceedings against UNT for violating the order. UNT moved for a jury trial and the district court denied the motion. UNT subsequently filed the instant petition for a writ of mandamus in this court.

The Supreme Court, in *Will v. United States,* 389 U.S. 90 (1967), has set restrictive general guidelines on the use of mandamus:

> "The peremptory writ of mandamus has traditionally been used in the federal courts only 'to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so.' . . . While the courts have never confined themselves to an arbitrary and technical definition of 'jurisdiction,' it is clear that only exceptional circumstances amounting to a judicial 'usurpation of power' will justify the invocation of this extraordinary remedy." 389 U.S. at 95. (Citations omitted.)

This is in substantial agreement with the Court's previous statements indicating that the petitioner for

mandamus has "the burden of showing that its right to issuance of the writ is 'clear and undisputable.'" *Bankers Life & Casualty Co. v. Holland,* 346 U.S. 379, 384 (1953).

There seems to be some relaxation of this requirement when the petitioner seeks enforcement of a right to a jury trial. In a civil case, there is no doubt that mandamus is appropriate if a jury trial is being wrongfully denied, even, it would appear, when the decision whether such right exists is a close or complicated one. *Beacon Theaters, Inc. v. Westover,* 359 U.S. 500, 511 (1959); *Dairy Queen, Inc. v. Wood,* 369 U.S. 469 (1962); *Filmon Process Corp. v. Sirica,* 379 F.2d 449, 451 (D.C. Cir. 1967).[1] As the court emphasized in *Will,* however, in a criminal case the general policy against piecemeal appeals takes on added weight, because "the defendant is entitled to a speedy resolution of the charges against him." 389 U.S. at 96. In this case defendants are seeking the mandamus and hence can be seen as waiving, to a limited extent, their right to a speedy trial.

We take the position that mandamus would be appropriate if a jury trial were required, and any denial of mandamus should be made only if either the case has not been adequately presented or there is no such

---

[1]The cited cases involve a constitutional jury trial right, while the instant case involves at best a statutory right to a jury trial. *See infra.* It would appear that the lower court would be equally unlawful, however, in denying either a constitutional or a statutory right to a jury trial, *see United States v. Igoe,* 331 F.2d 766 (7th Cir. 1964), *cert. denied* 380 U.S. 942 (1965), at least insofar as it would influence a decision to grant mandamus.

right to a jury trial. Since the issue has been adequately raised, and fully briefed, we shall rest decision on our view of the merits.

It is clear that UNT has no constitutional right to a jury trial. The district court has stated that in any event none of the defendants in the contempt case will be sentenced to more than six months imprisonment or fined in excess of $500. This court has adopted the maximum penalty rule in the context of contempt for disobeying a labor injunction, *In re Puerto Rico Newspaper Guild Local 225,* 476 F.2d 856 (1st Cir. 1973). Whether, therefore, the charged contempt is a major or petty offense must be considered to be a function of what the maximum penalties may be rather than, as the National Lawyers Guild, as amicus curiae, argues, a function of the importance of the defendant's charged behavior on some external scale of values. Offenses punishable by no more than six months imprisonment or a $500 fine may be considered petty offenses, for purposes of determining whether a constiutional right to a jury trial attaches. *Frank v. United States,* 395 U.S. 147, 149-50 (1969); *In re Puerto Rico Newspaper Guild, supra.*

The central issue in this case is whether UNT is guaranteed a right to a jury trial because of 18 U.S.C. § 3692. Up to 1948 the statute requiring jury trials in labor injunction contempt cases was § 11 of the Norris-LaGuardia Act, 29 U.S.C. § 111. It was limited to contempt proceedings arising under the Norris-LaGuardia Act. Up to this time only private employers could, under the very restrictive provisions of the

Act, 29 U.S.C. §§ 101-115, obtain injunctive relief against a union and its officers. Then in 1947, with the passage of the Taft-Hartley Act the National Labor Relations Board was also empowered to seek injunctive relief to stop the commission of alleged unfair labor practices pending final decision under sections 10(h) and 10(j) of NLRA. At the same time section 10(h) of NLRA, which provided that "the jurisdiction of courts sitting in equity shall not be limited by [sections 1-15 of the Norris-LaGuardia Act, 29 U.S.C. §§ 101-115]." was made applicable to the newly authorized Board-requested injunctions. In the following year, 18 U.S.C. § 3692 replaced 29 U.S.C. § 111. While part of a general recodification, section 3692 dropped the language of specific reference to Norris-LaGuardia Act contempt proceedings, and was relocated under Title 18, "Crimes and Criminal Procedure". It reads:

> "In all cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed . . . ."

It is our task to try to interpret section 3692. In so doing we shall need to determine whether it carries a broader meaning than the old section 111, and, if so, whether section 10(h) in turn narrows the impact of any such broader coverage. We are not helped to any

substantial degree by legislative history[2] or by decided cases.

Two cases are in point. In *Madden v. Grain Elevator, Flour and Feed Mill Workers, ILA, Local 418,* 334 F.2d 1014, 1020 (7th Cir. 1964), the court, without extensive consideration of alternatives, summarily concluded:

> "Section 3692 covers matters formerly found in § 11 of the Norris-LaGuardia Act. It is inapplicable to a proceeding under the Labor Management Relations Act [i.e., NLRA]. This inapplicability is evidenced by § 10(h) (29 U.S.C.A. § 160(h), of said Act, which excludes such proceedings as injunction and enforcement from the limitations of the Norris-LaGuardia Act." (Citations omitted.)

The court in *Hoffman v. International Longshoremen's & Warehousemen's Union, Local No. 10,* 492 F.2d 929 (9th Cir. 1974), 85 L.R.R.M. 2536, spoke to the same end, stressing the difference in purposes served by the Norris-LaGuardia Act and NLRA:

> "The purposes of the Norris-La-Guardia Act to limit and restrict the equitable powers of the courts to intervene in labor disputes between private employers and unions are not the same as the powers involved in the administrative scheme

[2]The Board points to H. Rep. No. 304, 80th Cong., 1st Sess., p. A 30, where it is said that "changes in phrascology" in the new Title 18 did not affect the "meaning or substance" of the old Section 11 of the old Norris-LaGuardia. Yet this statement was part of the explanatory note regarding the recodification of §§ 1, 21 and 24 of the Clayton Act (old 18 U.S.C. §§ 386, 387, 389 and 390) to § 402 of Title 18, in which there were clearly no changes in substance or meaning. No such statement is contained in § 3692.

> of the Labor Management Relations Act [NLRA] and its amendments. There is no reason to believe that Congress intended its grant of equitable powers to district courts as embodied in section 10(l) of the Act, 29 U.S.C. § 160(1), to be repealed by the recodification of section 11 of the Norris-LaGuardia Act, 29 U.S.C. § 111, into 18 U.S.C. § 3692 . . . ." (Citations omitted.) Slip op. at 7.

Neither case, in our opinion revealed sufficient analysis underlying the conclusion to be preclusive or persuasive. *Madden* simply states a conclusion, while, as we note below, *Hoffman's* fear of any limitation on the Board's equitable powers is misplaced.[3]

Addressing first the reach of § 3692, we find it extremely difficult to ignore the natural meaning of ordinary words. Our first inquiry is the meaning of "injunctions or restraining orders in any case involving or growing out of a labor dispute." The instant contempt proceeding arises out of a temporary injunction issued pursuant to section 10(j) of the NLRA, 29 U.S.C. § 160(j). Section 10(j) grants the district courts jurisdiction to issue injunctions, upon petition by the NLRB, in cases involving an alleged unfair labor practice, as defined in 29 U.S.C. § 158. A facial reading of § 3692 would therefore make it apply to many contempt proceedings under section 10(j) injunctions, since many cases involving an un-

[3]The cases cited by *Madden* and *Hoffman* merely deal with the question of the jurisdiction of the courts to issue injunctions, not the scope and applicability of § 3692. *See, e.g., Building Construction Trades Council v. Alpert,* 302 F.2d 594, 598 (1st Cir. 1962).

fair labor practice arise out of a "labor dispute".[4] In the instant case, the ground on which the Board's regional attorney sought an injunction was UNT's failure t comply with the notice and waiting requiremer s of sections 8(d)(3) and (4) of NLRA prior to engaging in a strike arising from contract negotiations. This would seem to be clearly a controversy concerning representation in negotiating terms or conditions of employment. Indeed, section 8(d)(3) requires that the Federal Mediation and Conciliation Service be given notice of the existence of a "dispute".

That the language of § 3692 would facially apply to many NLRA injunction situations, such as this one, is borne out by the source of the language itself, apparently section 1 of the Norris-LaGuardia Act, 29 U.S.C. § 101. That section applies to cases "involving or growing out of a labor dispute". If that language did not apply to at least some NLRA situations, there would be no reason for Congress to include a provision stating that section 1 did not apply to certain parts of the NLRA. Yet of course Congress

[4]Given the broad definition of "labor dispute" in both 29 U.S.C. § 113(c) (Norris-LaGuardia Act) and 29 U.S.C. § 152(9) (NLRA), both of which definitions include, inter alia, "any controversy . . . concerning the association or representation of persons in negotiating . . . terms or conditions of employment", many controversies concerning unfair labor practices would by definition involve or grow out of labor disputes.

We distinguish cases arising out of unfair labor practices from those arising under statutes vesting the government with authority to enforce compliance with more sharply defined federal standards which are not subject to bargaining as in *Mitchell v. Barbee Lumber Co.*, 35 F.R.D. 544 (S.D. Miss. 1964) and *In re Piccinini*, 35 F.R.D. 548 (W.D. Pa. 1964) [Fair Labor Standards Act].

did include such a provision in section 10(h) of the NLRA, 29 U.S.C. § 160(h), which specifically exempted the jurisdiction of courts "sitting in equity" under section 10 of the NLRA, 29 U.S.C. § 160, from the limitations of Norris-LaGuardia.

Our second inquiry is directed to the words "In all cases of contempt arising under the laws of the United States". Section 3692 is directly derived from section 11 of the Norris-LaGuardia Act, formerly 29 U.S.C. § 111 (1940 ed.). It was recodified in 1948 into 18 U.S.C. § 3692. Prior to the recodification, it applied, in terms, only to injunctions issued pursuant to the Norris-LaGuardia Act. At the time of recodification, its specific reference to Norris-LaGuardia was deleted and it was made to apply to "all cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute." Aside from the change in the language itself there was no contemporaneous manifestation of congressional intent to broaden the coverage of the section. The new language, moreover, tracks almost verbatim the language of section 1 of the Norris-LaGuardia Act, 29 U.S.C. § 101, and although a specific reference to that act would have been clearer, it is obvious that the language of § 3692 was primarily intended to cover the Norris-La Guardia Act. On the other hand, the recodification was enacted as positive law, placed in another title, and the original section 111 of 29 U.S.C. was repealed. If this were an ordinary statute such a clear change in language from a restrictive phrasing to a

broader one would negate any inference that the restrictive phrasing was still to be applied.

This is, however, not an ordinary statute, but one infused with a national policy arrived at after a painful and lengthy period of strife and debate. Absent any contemporary and significant legislative history, it seems to us entirely plausible that the Congress recognized that the conditions which led it to grant authority to the Board to petition for injunctive relief would also lead to its not infrequent use. This has, of course, proven to be the case, with Board-requested injunctions now being for more common than those requested by employers. So viewing this newly created device, the Congress might reasonably have seen fit to apply to it the same jury trial requirement as had previously attached to Norris-LaGuardia contempt proceedings. Indeed, were § 3692 to be read as identical in coverage with its predecessor section, the Congress in 1947 and 1948 would have worked the irony of creating a new and more easily obtained kind of labor injunction while, for practical purposes, confining the old jury trial protections to an obsolescing kind of injunction.

We therefore read § 3692 as carrying the plain meaning of its words and as including "all cases of contempt arising under the *laws* of the United States governing the issuance of injunctions . . . in *any* case involving or growing out of a labor dispute . . . ." [Emphasis supplied.]

This, however, does not settle the question before us. For we have to deal with section 10 of the Taft-

Hartley Act as amended the year before § 3692 took its present form, by the same Congress. Section 10(h) of the NLRA, 29 U.S.C. § 160(h), unchanged in the current statute, stated that in granting or enforcing Board-requested injunctive relief in connection with alleged unfair labor practices, "the jurisdiction of courts sitting in equity shall not be limited by [the provisions of Norris-LaGuardia]." After the section was amended in 1947, this exemption provision was made to apply to the new section 10(j) under which the present injunction was issued. In the final House Conference Report No. 510, on H.R. 3020, Labor-Management Relations Act, 1947. (Taft-Hartley Act), 80th Cong., 1st Sess., the Committee described the exemption provision as follows:

> "Sections 10(g), (h), and (i) of the present act, concerning the effect upon the Board's orders of enforcement and review proceedings, making inapplicable the provisions of the Norris-LaGuardia Act in proceedings before the courts, were unchanged . . . ."

The Board argues that section 10(h) "Thus expressly excludes judicial proceedings under the NLRA, both injunction and enforcement, from the limitations, of the Norris-LaGuardia Act". It also claims that the entire regulatory scheme created for Board supervision of labor-management relations would be aborted if the Board had to commit "to a panel of untrained laymen, a jury, the final enforcement step of the Act." This seems to us to overstate the problem, to ignore the policy considerations bearing on a criminal contempt proceeding and, in the light of the

policy considerations, to read section 10(h) as carving out an exemption broader than its language suggests.

It is of course clear that courts must have the power to enforce injunctive orders by civil contempt proceedings. Alleged unfair labor practices may be halted, with full recourse to coercive sanctions to enforce compliance with court orders. What we are dealing with in this case is the question of punishment after the event, not a proceeding which will interrupt or delay enforcement of injunctions. This involves nothing of the kind of expertise which is supplied by the Board in determining whether or not an act constitutes an unfair labor practice. It involves only the determination whether individuals or groups did in fact disobey, with requisite knowledge and intent, a court order so as to impose criminal sanctions.[5] The fact situations and evidence involved in such determinations are ordinary grist for the judgments of juries. Indeed, since a section 10(h) injunction may be obtained without the high threshold of a showing of harm required by a Norris-LaGuardia injunction, 29 U.S.C. § 107, we fail to see why need for a jury to decide criminal contempt issues arising out of such proceedings is diminished. That the threat of criminal contempt proceedings is a real deterrent to flagrant violation is shown by the rarity of the proceedings themselves. Moreover, while jury participation seems as appropriate as ever in criminal con-

[5]The issues at this contempt trial would seem to revolve about whether defendants continued to strike after the injunction, whether they failed to instruct members not to strike, whether defendants made certain public statements and threats, and took part in demonstrations.

tempt proceedings, reposing sole dispositive power in the judge seems as inappropriate as ever. The judge, who granted the injunction at the request of the Board, would be asked to mete out punishment if he finds that his order has been deliberately flouted. Appropriateness is not enhanced by the judge predetermining, before the extent or seriousness of the disobedience can be fully known, the maximum fines or sentences to be imposed in order to decide whether a jury trial is mandated by the constitution.

Finally, it seems to us that section 10(h) cannot comfortably be read as insulating criminal contempt proceedings following the issuance of a Board-requested injunction from the requirement of a jury trial. In the first place, at least in this context, it may be doubted whether the vindication or punishment function served by criminal contempt proceedings can be said to be embraced within the section 10(h) language of "granting . . . a restraining order, or . . . enforcing, modifying, and enforcing as so modified, or setting aside . . . an order". Whether or not this is so, because of the deeply ingrained Norris-LaGuardia policy of requiring jury trials in criminal contempt cases, because of the appropriateness of jury decision in such cases, and because of the effect, marginal if any, on Board oversight of labor relations, we read narrowly the critical words "the jurisdiction of courts sitting in equity".

We find it difficult to think of a court sitting to mete out punishment for past offenses as a court "sitting in equity". Criminal contempt proceedings can arise from proceedings begun in either law or equity.

While "contempt" generically may "sound in" equity, a criminal contempt proceeding really stems from the inherent power of a court, not merely a chancellor, to vindicate its authority. It is sui generis. *United States v. Barnett,* 346 F.2d 99 (5th Cir. 1965). The very fact that section 3692 is now placed under Title 18, Crimes and Criminal Procedure, adds to our conviction that proceedings thereunder cannot be equated with proceedings before a court specifically described as "sitting in equity".

But we have more direct authority. The Supreme Court in *Michaelson v. United States,* 266 U.S. 42 (1924) faced the question whether the predecessor of 18 U.S.C. § 3691, providing for a jury trial in contempt proceedings, following a Clayton Act injunction, should, though in terms not limited to criminal contempts, be so interpreted. The Court stated that if the proceeding contemplated by the statute be for a criminal contempt

> "—since the proceeding for criminal contempt, unlike that for civil contempt, is between the public and the defendant, is an independent proceeding at law, and no part of the original cause, *Gompers v. Bucks Stove & Range Co.,* 221 U.S. 418, 444-446, 451—we are at once relieved of the doubt which might otherwise arise in respect of the authority of Congress to set aside the settled rule that a suit in equity is to be tried by the chancellor without a jury unless he choose to call one as purely advisory."

While the Court was dealing with criminal contempts which were also, independently, criminal offenses, we

think its observations support our conclusion that any exemption from a jury trial requirement in criminal contempt proceedings is not adequately accomplished by confining the exemption to courts sitting in equity.[6]

Finally, we cannot refrain from observing that, had Congress wished to exempt NLRA completely from Norris-LaGuardia it knew how to do so. 29 U.S.C. § 178(b), in dealing with a new power given district courts to issue injunctions in certain circumstances involving a peril to the national health or safety, states "[i]n any case, the provisions of sections 101 to 115 of this title [i.e., Norris-LaGuardia], shall not be applicable". Yet it left section 10(h) referring only to the jurisdiction of a court sitting in equity when it reenacted it as part of the same statute.

Our conclusion, that § 3692 requires criminal contempt proceedings stemming from alleged violations of a NLRA injunction to be tried before a jury is, we feel, an appropriate accommodation of the policies which inform the NLRA and § 3692. It leaves to the Board full power to request temporary relief and, in the event of noncompliance, to coerce obedience through civil contempt proceedings, without delay or interposition of a jury. But it also leaves available, for the rare case when punitive measures are after the fact, deemed necessary, the historic protection of a jury trial. In short, the literal interpretations we

---

[6] *See also National Labor Relations Bd. v. Hopwood Retinning Co.,* 104 F.2d 302, 305 (2d Cir. 1939): "As a proceeding for *civil* contempt, this is therefore properly a continuance of the earlier action in this court and is a step in the enforcement of our previous judgment." [Emphasis supplied.]

have given both section 3692 and section 10(h) result in giving some meaningful effect to both provisions. "Our duty . . . is to seek out that accommodation of the two which will give the fullest possible effect to the central purposes of both." *Sinclair Refining Co. v. Atkinson,* 370 U.S. 195, 216 (1962) (dissenting opinion, relied upon by the Court in *Boys Markets v. Clerks Union,* 398 U.S. 235, 249 (1970)).

So ordered.

CAMPBELL, *Circuit Judge* (dissenting). I reluctantly dissent because I am unable to accept the broad interpretation placed upon 18 U.S.C. § 3692. In the absence of contemporaneous legislative history, it seems strained to impute to legislators working on a recodification of the criminal law an intention to broaden in such a significant way the reach of section 11 of the Norris-LaGuardia Act. The recodification occurred one year after the passage of the Taft-Hartley Act in a setting foreign to substantive revision of the labor law. While the language of the recodification is somewhat more broad than formerly, most of the earlier language was tracked and it seems most likely to me that a draftsman, perhaps unsophisticated in labor law, was merely trying to carry forward the old statute in a new setting.

In any event, for more than twenty years since the NLRB has construed the statute not to require jury trials. The Supreme Court has stated that "[w]hen faced with a problem of statutory construction, this Court shows great deference to the interpretation given the statute by the officers or agency charged

with its administration." *Udall v. Tallman,* 380 U.S. 1, 16 (1965). Ten years ago a federal circuit court supported the agency's position. *Madden v. Grain Elevator, Flour and Feed Mill Workers, ILA, Local 418,* 334 F.2d 1014 (7th Cir. 1964), *cert. denied,* 379 U.S. 967 (1965). If the statute had been passed recently, I might have found it easier to join the court's position. But it is not a new section, and the agency is not advancing a novel or unreasonable construction. Any change in the interpretation of the law should, in my judgment, come only from Congress.

The fact that in 29 U.S.C. § 160(h) Congress specifically exempted the jurisdiction of courts "sitting in equity" from the limitations of the Norris-La Guardia Act does not necessarily mean that it must have intended the Norris-LaGuardia Act to apply in some cases. Its language does not become mere surplusage unless it intended to connect the two acts in some instances; rather Congress may have been stressing their differences. *Cf. United States v. Giordano,* 94 S.Ct. 1820, 1832 (1974).

If a literal reading of section 3692 is adopted to justify extending coverage to the Taft-Hartley Act, further problems arise. When the plain meaning of the words are analyzed, it is logically difficult to interpret "all cases of contempt" as limited to all cases of criminal contempt. The majority reasons that when courts enforce injunctive orders by civil contempt, they are "acting in equity" and, thus, 29 U.S.C. § 160(h) precludes the application of the Norris-La

Guardia provisions. However, if section 3692 is interpreted not as a rewriting of section 11 of the Norris-LaGuardia Act but as a new expression of congressional attitude toward labor contempt proceedings, it would have to be independent of the Norris-LaGuardia Act. If it is so independent, then it is not an application of the Norris-LaGuardia Act and arguably not precluded by section 160(h). I agree, however, with the majority that such a radical revision was certainly not intended.

To the extent that the opinion distinguishes between civil and criminal contempt on the basis of policy considerations underlying jury trials in criminal contempt proceedings, I would prefer to rest solely on the lines of distinction drawn by the constitution. The Supreme Court's sensitivity to the rights of alleged contemnors, *cf. Codispoti v. Pennsylvania,* 94 S.Ct. 2687 (1974), is sufficient protection against the agency's undercutting fundamental policy considerations. Jury trials take more time and cost more money, and they are not ideally geared to this sort of procedure. I see no reason to add one more burden to an already overburdened system when, so far as appears, there is no need to do so.

Supreme Court, U.S.
FILED
JAN 11 1975
MICHAEL RODAK, JR., CLERK

JOINT APPENDIX

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1973

No. 73-1924

JAMES R. MUNIZ and BROTHERHOOD OF TEAMSTERS AND AUTO TRUCK DRIVERS LOCAL No. 70, IBTCHWA,
Petitioners,

vs.

ROY O. HOFFMAN, Director, Region 20, NATIONAL LABOR RELATIONS BOARD,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Petition for Writ of Certiorari Filed June 24, 1974
Certiorari Granted November 11, 1974

PERNAU-WALSH PRINTING CO. - 562 MISSION STREET - SAN FRANCISCO, CA 94105

Subject Index

	Page
Civil docket	2
Relevant proceedings	3
Temporary injunction, case No. C-70 306 LHB	6
Temporary injunction, case No. C-70 895 WTS	10
Petition for adjudication in civil contempt and for other relief; and request for institution of, adjudication in, and punishment for criminal contempt	14
Order designating attorneys to prosecute criminal contempt proceedings	37
Order to show cause for adjudication in civil and criminal contempt	39
Response to order to show cause for adjudication in criminal contempt	42
Presentence report and recommendations	43
Order granting the petition for a writ of certiorari	53
Transcript proceedings	54

JOINT APPENDIX

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1973

No. 73-1924

JAMES R. MUNIZ and BROTHERHOOD OF TEAMSTERS AND AUTO TRUCK DRIVERS LOCAL No. 70, IBTCHWA,
Petitioners,

VS.

ROY O. HOFFMAN, Director, Region 20, NATIONAL LABOR RELATIONS BOARD,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Petition for Writ of Certiorari Filed June 22, 1974
Certiorari Granted November 11, 1974

Civil Docket
United States District Court

C-70 895 WTS

Roy O. Hoffman, etc.,

vs.

San Francisco Typographical Union No. 21, International Typograpical Union, AFL-CIO.

For Plaintiff:
National Labor Relations Board
450 Golden Gate Ave., SF

For Defendant:
Brundage, Neyhart, Grodin & Beeson
100 Bush St., SF

Gladstein, Leonard, Patsey & Anderson
1182 Market St.
San Francisco, ca. 94102

Jacobs, Sills & C[illegible]entz
555 California St., No. 3100
San Francisco, CA. 94104

Levy & Van Bourg
45 Polk Sr.
San Francisco, Calif. 94102

Severson, Werson, Berke, Melchior
433 California St., SF 94104
982-2780

RELEVANT PROCEEDINGS

1970

Apr. 28:

1. Filed complaint, no process.
3. Filed Stip & Ord granting Tro. (Sweigert)
4. Filed Temporary Injunction. (Sweigert)

Oct. 19:

39. Filed Pltffs Osc. Set for 10/23/70 at 2:00 P.M.
40. Filed Pltffs Memo in Supp. of Petn.
41. Filed Pltffs Petn. for Adjudication.
42. Filed Pltffs Affidavit in Supp. of Petn.
43. Filed Order Designating Atty to Prosecute Criminal Contempt Proceedings.

Oct. 20:

44. Filed Pltffs Notice of Mo. Set for 10/23/70 at 2:00 P.M.
45. Filed Pltffs Adj. & Order in Civil Contempt.

Oct. 23:

46. Filed Order Amending Order to S.C. for Adj. in Civil & Criminal Contempt. The Ret. Date on the Order to S.C. Is Cont'd to 11/2/70 at 10:00 a.m. (WTS)

Oct. 27:

50. Filed Pltffs Opps. to Defts. Mo. for Jury Trial.

Oct. 28:

51. Filed (Charging Pty, Independent Journal) Memo. of Pts. & Authy.

Oct. 29:

52. Filed Defts Memo. of Law in Supp. of Mo. for Severance & for Jury Trial.

Nov. 2:

67. Filed Order Amending Osc for Adj. in Civil & Criminal Contempt. Cont'd to 11/3/70 at 11:00 a.m. (OJC).
Ord. Cont'd to 11/3/70 at 11:00 a.m. (WTS)

Nov. 30:

92. Filed Pltffs Memo. Re Maxium Fine for the Offense of Criminal Contp. Ord. Cont'd to 12/2/70 at 2:00 P.M. (WTS

Dec. 21:

101A. Filed Outline of Evidence in Support of Mo to Dismiss as to Local 70.

Dec. 24:

106. Filed Order and Adj. in Criminal Contempt. Further Ordered That the Respondents Shall Appear in Person Before This Ct. 1/21/71 at 4:00 P.M.

107. Filed Order and Adj. in Civil Contempt. (WTS)
Hearing in Chambers: All counsel present. Ord. that Ord. & Adj. of Civ. 1 Contempt be filed. Respondents to appear on Jan. 21, 1971 at 4:00 P.M.

Dec. 30:

108. Filed Local No. 70 — James Muniz Req. for Special Findings.

1971

Jan. 21:

119. Filed Deft (Local No. 70 & James R. Muniz) Response to OSC. for Adj. in Civ. Cont.

120. Filed Defts Mo. for New Trial Criminal Contempt.

121. Filed Defts Mo. to Vacate & Set Aside Findings of Guilt or Criminal Contempt.

122. Filed Defts (Local No. 70 & James R. Muniz) Response to OSC. for Adj. in Criminal Contempt.

123. Filed Defts (Local No. 70 & James R. Muniz) Declaration of Victor J. Van Bourg in Opps. to Imposition of Any Fines & Penalties.

124. Filed Findings of Facts & Conclusions of Law Re-Criminal Contempt. (WTS)

125. Filed Marshal's Ret. on Order & Adj. in Criminal Contempt Ex. on 1/19/71 Ord. Cont'd to 1/22/71 at 2:00 P.M. (WTS)

Jan. 22:

126. Filed Defts (Brotherhood of Teamsters & Auto Truck Drivers Local No. 70 International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers Of America & James R. Muniz,) Notice of Appeal.
Mailed Clerk Certificate of Filing of Notice of Appeal.

United States District Court
For the Northern District of California

Civil No. C-70 306 LHB

Roy O. Hoffman, Regional Director of the Twentieth Region of the National Labor Relations Board, for and on behalf of the National Labor Relations Board,

Petitioner,

vs.

San Francisco Typographical Union No. 21, International Typographical Union, AFL-CIO;

Freight, Construction, General Drivers & Helpers Union Local 287, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America; and

Brotherhood of Teamsters & Auto Truck Drivers Local No. 85, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America,

Respondents.

[Filed Feb. 13, 1970]

TEMPORARY INJUNCTION

This cause came on to be heard upon the verified petition together with supporting affidavits of Roy O. Hoffman, Regional Director of the Twentieth Region of the National Labor Relations Board, for and on behalf of said Board, praying for a temporary restraining order and for a temporary injunction pur-

suant to Section 10 (1) of the National Labor Relations Act, as amended [29 U.S.C. §160 (1)], pending the final disposition of the matter herein involved now pending before said Board, and upon the issuance of an order to show cause why injunctive relief should not be granted as prayed in said petition. The Court, upon consideration of the pleadings, affidavits, evidence, briefs and argument of counsel, and the entire record in the case, has made and filed its Findings of Fact and Conclusions of Law, finding and concluding that there is reasonable cause to believe that respondents San Francisco Typographical Union No. 21, International Typographical Union; Freight, Construction, General Drivers & Helpers Union Local 287 and Brotherhood of Teamsters & Auto Truck Drivers Local No. 85, both affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (herein respectively called Typographers Local 21, Teamsters Local 287 and Teamsters Local 85), have engaged in and are engaging in, acts and conduct in violation of Section 8 (b)(4)(i)(ii), subparagraph (B) of said Act [29 U.S.C. §158 (b)(4)(i)(ii)(B)], affecting commerce within the meaning of Section 2, subsections (6) and (7) of said Act [29 U.S.C. §152 (6) and (7)], and that such acts and conduct will likely be repeated or continued unless enjoined.

Now, therefore, upon the entire record, it is

Ordered, Adjudged And Decreed that, pending the final disposition of the matter herein involved pending before the National Labor Relations Board, respond-

ents Typographers Local 21, Teamsters Local 287 and Teamsters Local 85, their officers, representatives, agents, servants, employees, attorneys, and all members, persons and other labor organizations acting in concert or participation with them or any of them, be, and they hereby are, enjoined and restrained from:

(a) Continuing to picket at or in the vicinity of Pier 46A at the Port of San Francisco; or picketing cargo or shipments of newsprint or other supplies awaiting delivery to California Newspapers, Inc., d/b/a San Rafael Independent Journal (herein called Journal), or picketing the piers or terminals where such cargo or shipments are located, or picketing the carriers of such cargo or shipments; or signaling or appealing to truckdrivers or other employees not to pick up, handle or work on such cargo or shipments at such piers of terminals, or otherwise to refuse to perform services for their respective employers at such piers or terminals; or

(b) Engaging In, or by picketing, orders, directions, solicitation, requests or appeals, however given, made or imparted, or by any like or related acts or conduct, or by permitting any such to remain in existence or effect, or by employee discrimination, reprisals, disciplinary proceedings or threats thereof, Inducing Or Encouraging any individual employed by Star Terminal Co., Inc., Garden City Transportation Co., Ltd., Globe-Wally's Fork Lift Service, Inc. (herein called Star, Garden City and Globe), or by any motor carrier, lift truck service company or other person engaged in commerce or in an industry affecting commerce To Engage In, a strike, slowdown or refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities, or to perform any service; or sanctioning, supporting or promoting any such strike or refusal; or

in any such or similar manner or by any other means, including refusal to dispatch employees pursuant to contractual obligation or custom, Threatening, Coercing Or Restraining said employers, or any other person engaged in commerce or in an industry affecting commerce,—

where in either case An Object Thereof is: (1) to force or require Powell River-Alberni Sales Limited (herein called Powell), or any other person, to cease doing business with Journal; or (2) to force or require Star, Garden City, or any other person to cease doing business with Powell, or to force or require Globe or any other person to cease doing business with Garden City, in order to compel Powell to cease doing business with Journal.

Done at San Francisco, California, this 13th day of February, 1970.

Lloyd H. Burke
United States District Judge

United States District Court
For The Northern District Of California

Civil No. C-70 895 WTS

Roy O. Hoffman, Regional Director of the Twentieth Region of the National Labor Relations Board, for and on behalf of the National Labor Relations Board,

Petitioner,

vs.

San Francisco Typographical Union No. 21, International Typographical Union, AFL-CIO,

Respondent.

[Filed Apr. 28, 1970]

TEMPORARY INJUNCTION

Roy O. Hoffman, Regional Director of the Twentieth Region of the National Labor Relations Board, having filed a verified petition with this Court on April 28, 1970, for and on behalf of said Board, pursuant to Section 10 (1) of the National Labor Relations Act, as amended [29 U.S.C. §160 (1)], for an order enjoining and restraining San Francisco Typographical Union No. 21, International Typographical Union, AFL-CIO (herein called Respondent Local 21), from engaging in certain acts and conduct set forth in said petition pending final disposition of the matters involved now pending before said

Board; and Respondent Local 21 having made and executed a Stipulation waiving the filing of an answer to the petition, the filing of opposing affidavits, a hearing before the Court or the taking of formal testimony, as well as the making and entering of Findings of Fact and Conclusions of Law by the Court, and having consented to the entry of this Order; and the Court having considered the verified petition and the Stipulation of the parties and concluding that Petitioner has reasonable cause to believe that Respondent Local 21 has engaged in, and is engaging in, acts and conduct in violation of Section 8 (b)(4)(ii), subparagraph (B), of said Act [29 U.S.C. §158 (b)(4)(ii)(B)], affecting commerce within the meaning of Section 2, subsections (6) and (7), of said Act [29 U.S.C. §152 (6) and (7)], and that such acts and conduct will likely be repeated or continued unless enjoined,

Now, therefore, upon the above and the entire record in this case, it is

Ordered, Adjudged And Decreed that, pending the final disposition of the matters here involved pending before the National Labor Relations Board, Respondent Local 21, its officers, representatives, agents, servants, employees, attorneys, and all members, persons and labor organizations acting in concert or participation with it, be, and they hereby are, enjoined and restrained from:

(a) Continuing or resuming its picketing of the following named employers at or in the vicinity of the stores listed below where an object of the picket-

ing is to cause customers of these stores to cease buying products not advertised in The Independent Journal newspaper:

The Emporium
835 Market Street
San Francisco, California

The Emporium
1000 Northgate Fashion Mall
San Rafael, California

Mayfair Market
7th and H Streets
San Rafael, California

Lucky
720 Center Street
Fairfax, California

Big G Super
100 Harbor Drive
Sausalito, California

Big G Super
5651 Paradise Drive
Corte Madera, Calilfornia

Longs Drugs
880 Sir Francis Drake Boulevard
San Anselmo, California

Long Drugs
442 Los Gallinas Avenue
San Rafael, California

(b) Picketing at or in the vicinity of the premises of other firms which advertise in The Independent

Journal newspaper where an object of the picketing is to cause customers of such firms to cease buying products not advertised in that paper;

(c) Appealing to the public, consumers and customers by means of handbills, oral statements, or otherwise, in conjunction with picketing, not to patronize the stores described in subparagraph (a) above, or any store owned by the firms named therein, or any other store advertising in The Independent Journal newspaper; or

(d) Threatening, coercing, or restraining The Emporium-Capwell Corporation, Arden-Mayfair Incorporated, Lucky Stores, Inc., Big G Super Markets, Inc., Longs Drug Stores Incorporated or any other firm advertising in The Independent Journal newspaper, by consumer picketing or by any like or related acts or conduct, where an object thereof is to force or require the said advertisers to cease advertising in The Independent Journal newspaper or to cease doing business with California Newspapers, Inc., d/b/a The Independent Journal.

Done at San Francisco, California, this 28th day of April, 1970.

W. T. Sweigert,
United States District Judge.

United States District Court
For The Northern District Of California

Civil No. C-70-895 WTS

Roy O. Hoffman, Regional Director of the Twentieth Region of the National Labor Relations Board, for and on behalf of the National Labor Relations Board,

Petitioner,

vs.

San Francisco Typographical Union No. 21, International Typographical Union, AFL-CIO, and John DeMartini, its Vice President, and Don Abrams, its Organizer; Brotherhood of Teamsters & Auto Truck Drivers Local No. 70, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers Of America, and James R. Muniz, its President; Brotherhood of Teamsters & Auto Truck Drivers Local No. 85, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, and Timothy J. Richardson, its Business Manager and Recording Secretary, and Henry Montano, its Business Representative; and International Longshoremen's and Warehousemen's Union, Local No. 10,

Respondents.

In re:
San Francisco Typographical Union No. 21, International Typographical Union, AFL-CIO, and John DeMartini, its Vice President, and Don Abrams, its Organizer; Brotherhood of Teamsters & Auto Truck Drivers Local No. 70, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, and James R. Muniz, its President; Brotherhood of Teamsters & Auto Truck Drivers Local 85, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, and Timothy J. Richardson, its Business Manager and Recording Secretary, and Henry Montano, its Business Representative; and International Longshoremen's and Warehousemen's Union, Local No. 10,

Respondents.

[Filed Oct. 19, 1970]

PETITION FOR ADJUDICATION IN CIVIL CONTEMPT AND FOR OTHER RELIEF; AND REQUEST FOR INSTITUTION OF, ADJUDICATION IN, AND PUNISHMENT FOR CRIMINAL CONTEMPT

To the Honorable, the Judges of the United States District Court for the Northern District of California:

Comes now Roy O. Hoffman, Regional Director of the Twentieth Region of the National Labor Relations Board (herein called the Board) and respectfully petions this Court to adjudge Respondents San Francisco Typographical Union No. 21, International Typographical Union, AFL-CIO (herein called Local 21), its officers and agents, and John DeMartini (herein called DeMartini), its Vice President, and Don Abrams (herein called Abrams), its Organizer; Brotherhood of Teamsters & Auto Truck Drivers Local No. 70, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of

America, (herein called Local 70), its officers and agents, and James R. Muniz (herein called Muniz), its President; Brotherhood of Teamsters & Auto Truck Drivers Local No. 85, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (herein called Local 85), its officers and agents, and Timothy J. Richardson (herein called Richardson), its Business Representative; and International Longshoremen's and Warehousemen's Union, Local No. 10 (herein called Local 10), and its officers and agents, in civil contempt of this Court for failing and refusing to obey the orders granting temporary injunctions of this Court entered herein in Civil No. C-70 306 LHB on February 13, 1970, and in Civil No. C-70 895 WTS on April 28, 1970. Further, Petitioner respectfully request this Court to institute, sua sponte, a prosecution of Respondents, and each of them, for criminal contempt of court, and to adjudge and punish them for such criminal contempt, by reason of their having knowingly, wilfully, and intentionally disobeyed and violated the said decrees of this Court.

In support of his petition herein for an adjudication in civil contempt, and for other civil relief, and his request for the institution of, adjudication in, and punishment for, criminal contempt, Petitioner, upon information and belief, alleges as follows:

IN RESPECT TO THE PETITION FOR ADJUDICATION IN CIVIL CONTEMPT AND FOR OTHER CIVIL RELIEF

I. A. On February 13, 1970, in Civil No. C-70 306 LHB, after a hearing held on the same date, this Court entered an order granting a temporary injunction providing, in pertinent part, as follows:

Ordered, Adjudged And Decreed that, pending the final disposition of the matter herein involved pending before the National Labor Relations Board, Respondents Typographers Local 21, Teamsters Local 287 and Teamsters Local 85, their officers, representatives, agents, servants, employees, attorneys, and all members, persons and other labor organizations acting in concert or participation with them or any of them, be, and they hereby are, enjoined and restrained from:

(a) Continuing to picket at or in the vicinity of Pier 46A at the Port of San Francisco; or picketing cargo or shipments of newsprint or other supplies awaiting delivery to California Newspapers, Inc., d/b/a San Rafael Independent Journal (herein called Journal), or picketing the piers or terminals where such cargo or shipments are located, or picketing the carriers of such cargo or shipments; or signaling or appealing to truckdrivers or other employees not to pick up, handle or work on such cargo or shipments at such piers or terminals, or otherwise to refuse to perform services for their respective employers at such piers or terminals; or

(b) Engaging In, or by picketing, orders, directions, solicitation, requests or appeals, howsoever given, made or imparted, or by any like or related acts or conduct, or by permitting any such to remain in existence or effect, or by employee discrimination, reprisals, disciplinary proceedings or threats thereof, Inducing Or Encouraging any individual employed by Star Terminal Co., Inc., Garden City Transportation Co., Ltd., Globe-Wally's Fork Life Service, Inc. (herein called Star, Garden City and Globe), or by any motor carrier, lift truck service company or other person engaged in commerce or in an industry affecting commerce To Engage In, a strike, slowdown or refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities, or to perform any service; or sanctioning, supporting or promoting any such strike or refusal; or

in any such or similar manner or by any other means, including refusal to dispatch employees pursuant to contractual obligation or custom, Threatening, Coercing Or Restraining said employers, or any other person engaged in commerce or in an industry affecting commerce,

where in either case An Object Thereof is: (1) to force or require Powell River-Alberni Sales Limited (herein called Powell), or any other person, to cease doing business with Journal; or (2) to force or require Star, Garden City, or any other person to cease doing business with Powell, or to force or require Globe or any other person to cease doing business with Garden City, in order to compel Powell to cease doing business with Journal.

B. On April 20, 1970, in Civil No. C-70-895 WTS, this Court entered an order granting a temporary injunction providing, in pertinent part, as follows:

Ordered, Adjudged And Decreed that, pending the final disposition of the matters here involved pending before the National Labor Relations Board, Respondent Local 21, its officers, representatives, agents, servants, employees, attorneys, and all members, persons, and labor organizations acting in concert or participation with it, be, and they hereby are, enjoined and restrained from:

(a) Continuing or resuming its picketing of the following named employers at or in the vicinity of the stores listed below where an object of the picketing is to cause customers of these stores to cease buying products not advertised in The Independent Journal newspaper:

The Emporium
835 Market Street
San Francisco, California

The Emporium
1000 Northgate Fashion Mall
San Rafael, California

Mayfair Market
7th & H Streets
San Rafael, California

Lucky
720 Center Street
Fairfax, California

Big G Super
100 Harbor Drive
Sausalito, California

Big G Super
5651 Paradise Drive
Corte Madere, California

Longs Drugs
880 Sir Francis Drake Boulevard
San Anselmo, California

Longs Drugs
442 Las Gallinas Avenue
San Rafael, California

(b) Picketing at or in the vicinity of the premises of other firms which advertise in The Independent Journal newspaper where an object of the picketing is to cause customers of such firms to cease buying products not advertised in that paper;

(c) Appealing to the public, consumers and customers by means of handbills, oral statements, or otherwise, in conjunction with picketing, not to patronize the stores described in subparagraph (a) above, or any store owned by the firms named therein, or any other store advertising in The Independent Journal newspaper; or

(d) Threatening, coercing, or restraining The Emporium-Capwell Corporation, Arden-Mayfair Incorporated, Lucky Stores, Inc., Big G Super Markets, Inc., Longs Drug Stores Incorporated or any other firm advertising in The Independent Journal newspaper, by consumer picketing or by any like or related acts or conduct, where an object thereof is to force or require the said advertisers to cease advertising in The Independent Journal newspaper or to cease doing business with California Newspapers, Inc., d/b/a The Independent Journal.

II. (a) John DeMartini and Don Abrams (herein called DeMartini and Abrams, respectively), are, and at all times material herein have been, the Vice President and Organizer, respectively, of Respondent Local 21, and its agents within the meaning of the National Labor Relations Act, as amended, 29 U.S.C., Sec. 151, *et seq.* (herein called the Act).

(b) Local 70 is, and at all times material herein has been, a labor organization within the meaning of the Act.

(c) James R. Muniz (herein called Muniz) is, and at all times material herein has been, President of Respondent Local 70, and its agents within the meaning of the Act.

(d) Timothy J. Richardson and Henry Montano (herein called Richardson and Montano, respectively), are, and at all times material herein have been, the Business Manager and Recording Secretary and Business Representative, respectively, of Respondent Local 85, and its agents within the meaning of the Act.

III. The aforesaid injunction orders have been in full force and effect since their entry, and, at all times material herein, Respondents, and each of them, have had notice and full and actual knowledge of their terms.

IV. Respondents have violated, resisted and disobeyed, and continue to violate, resist and disobey, and have failed and refused, and continue to fail and refuse, to comply with said orders.

More specifically, on or about or prior to October 7, 1970, Respondents embarked upon a joint plan, program and campaign to create a boycott of goods, materials, commodities and services destined to, consigned to, or utilized by firms advertising in the Independent Journal Newspaper or to firms doing business with the Journal. In furtherance and support of their aforesaid joint plan, program and campaign:

1. On or about October 8, 1970, Respondent Abrams met with a group of approximately 15 men outside the Painters Union Hall on Mission and Tamalpais Streets in the City of San Rafael, California (hereafter referred to as San Rafael), during which meeting bumper stickers stating "Scabs Must Go" were distributed to members of the group. Thereafter, these men were dispatched by respondents to various street corners in San Rafael, where they engaged in stopping trucks of various carriers delivering merchandise and commodities to food markets and other firms in San Rafael advertising in the Journal and, by oral appeals, by picketing, by obstructing traffic, by threats and by intimidations induced and encouraged individuals employed by various carriers and food markets to refuse to make deliveries to firms advertising in the Journal, including Mayfair Market (herein called Mayfair). Among the individuals engaging in the aforesaid conduct was Respondent Richardson.

2. Also on or about October 8, 1970, Respondents, including Respondent Richardson, picketed the delivery area of Safeway, Inc. (herein called Safeway), located at 700 B Street in San Rafael, and orally appealed to a driver of Safeway not to deliver to Safeway goods in his truck.

3. Also on or about October 8, 1970, Respondents threatened Garden City Transportation Co. Ltd. (herein called Garden City) with endangering the safety of its drivers if Garden City continued to transport newsprint to the Journal. In addition, Respondents, by their agents, including Richardson and Muniz, harassed the driver of a truck of Garden City on its return trip to Garden City's premises after making delivery of newsprint to the Journal, intimidated a driver of Garden City and picketed the premises of Garden City and its truck with signs the legend of which read "Teamsters on Strike Scabs Must Go". As a consequence of such picketing, drivers of Garden City engaged in work stoppages and refusals to perform services for their employer. In addition, Respondents threatened Garden City with the shutdown of its operations on October 9, 1970.

4. On or about October 9, 1970, Respondents again picketed the premises of Garden City.

5. Also on or about October 9, 1970, Respondents, including Respondent Richardson, picketed a store of Lucky Stores, Inc. (herein called Lucky) at 400 Las Galinas Avenue, San Rafael, as a consequence of which drivers employed by various carriers were prevented from making deliveries to the said store. In

addition, Respondents orally induced, encouraged and appealed to drivers employed by carriers and suppliers not to make deliveries, and photographed drivers disregarding such appeals.

6. Also on or about October 9, 1970, Respondents picketed a Lucky Store at 720 Center Street, Fairfax, California, as a consequence of which drivers employed by various carriers and suppliers refused to make deliveries to such store. In addition, Respondents orally appealed to drivers of various carriers and suppliers not to make deliveries to such store.

7. Also on or about October 9, 1970, Respondents picketed the premises of Foremost Dairy Company (herein called Foremost) in San Rafael and a store of Mayfair at 340 Third Street, San Rafael. In addition, Respondents orally appealed to, directed, instructed and ordered drivers not to make deliveries to the said store of Mayfair, as a consequence of which scheduled deliveries were not made.

8. Also on or about October 9, 1970, Respondents picketed the entrance to the Red Hill Shopping Center, Sir Francis Drake Boulevard, San Anselmo, California, with signs reading "Teamsters Support Independent Journal" and "Teamsters On Strike". Respondents, by such picketing and by oral inducements, caused trucks delivering goods to the Safeway Store located at 900 Sir Francis Drake Boulevard, San Anselmo, California, to turn away. Respondents also stopped trucks on Sir Francis Drake Boulevard, and induced and encouraged delivery drivers not to make deliveries to various Marin County retail stores.

9. On or about October 10, 1970, Respondents, by their pickets and agents, by picketing and by threats of property damage, induced and encouraged drivers of Lucky not to perform services at the Lucky Store located at 720 Center Street, Fairfax, California, and as a consequence prevented regular drivers from performing their duties for Lucky.

10. On or about October 12, 1970, Respondents, by their agents, by threats of physical violence and other means, orally induced and encouraged delivery drivers not to perform services at Lucky, 400 Las Galinas Avenue, San Rafael, California.

11. On or about October 12, 1970, Respondents, by their agents and pickets, by picketing and by means of threats of physical violence, induced and encouraged delivery drivers employed by Safeway not to perform services at Safeway's 700 B Street store, San Rafael, California.

12. Also on or about October 12, 1970, and continuing through October 16, 1970, Respondents, by their agents and pickets, by means of picketing and other activities, induced and encouraged Safeway drivers not to perform services at its 700 B Street, San Rafael store. As a result, deliveries of meat, milk, bread and groceries were not made as scheduled.

13. Also on or about October 12, 1970, Respondents, by their agents and pickets, by means of picketing and threats to drivers, induced and encouraged drivers not to make deliveries at United Market located at 515 Third Street, San Rafael, California. As a result, deliveries to that store were not made.

14. Also on or about October 12, 1970, Respondents, by their agents and pickets, by means of picketing and other activities, induced and encouraged drivers of Mayfair not to perform services for their employer.

15. Also on or about October 12, 1970, Respondents, by their officers, agents and pickets, by means of threats of physical violence, picketing, oral appeals, and other activities, induced and encouraged drivers of Lucky not to perform services at its 720 Center Street, San Anselmo, California store. The pickets carried signs with legends stating "Teamsters—Scabs Must Go—On Strike". As a result of such activities, drivers employed by Lucky did not perform services for their employer.

16. On or about October 13, 1970, Respondents, by seven pickets, picketed three corners of the Highway 101 off-ramp to San Rafael, California, at Mission and Heatherton Streets, carrying signs bearing the legend "Unfair To Teamsters—Scabs Must Go". By such picketing, and other conduct, Respondents obstructed traffic entering San Rafael while inducing and encouraging truck drivers not to perform services for, make deliveries to, or pickups from retail stores located in San Rafael.

17. Also on or about October 13, 1970, Respondents, by their agents and pickets, by means of picketing and other activities, induced and encouraged drivers of Safeway not to perform services at Safeway's 900 Sir Francis Drake Boulevard, San Anselmo, California, store. As a result of such activities, those deliveries were not made.

18. On or about October 14, 1970, Respondents, by their agents and pickets, picketed the Highway 101 off-ramp at Second and Irwin Streets, San Rafael, California. That same day Respondents, by their agents and pickets, picketed two corners of the Highway 101 off-ramp to San Rafael at Mission and Heatherton Streets.

19. On or about October 14, 1970, Respondents, by their agents and pickets, picketed the Safeway store located at 700 B Street, San Rafael, California.

20. Also on or about October 14, 1970, Respondents, by their agents and pickets, picketed the delivery areas to the United Super Market located at 100 Red Hill Avenue, San Anselmo, California, and such pickets and agents orally induced and encouraged drivers not to make deliveries at that store. As a result of Respondents' activities, deliveries were not made.

21. Also on or about October 14, 1970, Respondents, by their agents and pickets, picketed the street corners adjacent to and the delivery area of the United Market located at 515 Third Street, San Rafael, California. Respondents' said agents and pickets, by threats and picketing, induced and encouraged drivers not to make deliveries to that store. As a result of such activities, deliveries by Rath Packing Company and Foremost Dairy were not made.

22. Also on or about October 14, 1970, Respondents, by their agents, signaled an employee of Ritz

Foods, and orally induced and encouraged him not to perform services for his employer in San Rafael, San Anselmo or Fairfax, California.

23. Also on or about October 14, 1970, Respondents, by their agents and pickets, by threats and picketing, induced and encouraged drivers of various employers engaged in commerce or in industries affecting commerce not to handle goods destined for Petrini's Meat, Inc. As a result of such activities, deliveries from the following employers were not made: Foremost Dairy, Armour & Company, American Poultry, McDermott Meats, and Mace Meat Company. As a further consequence of the activities herein described at Petrini's, that store received no deliveries of any kind after Respondents' picketing began October 14, 1970.

24. On or about October 15, 1970, Respondents, by their agents and pickets, picketed a Safeway truck near or adjacent to the Safeway store at 700 B Street, San Rafael, California. As a consequence of such picketing and other conduct, the Safeway driver refused to perform services for Safeway and to deliver the goods in his truck.

25. On or about October 16, 1970, Respondents, by their pickets and agents, picketed the driveway and loading dock entrances to the Lucky Store at 720 Center Street, Fairfax, California. The pickets carried signs stating "This Seafarer Supports I.J. Strikers" and signs stating "Seamans Support I. J. Strikers".

26. Also on or about October 16, 1970, Respondents, by their agents and pickets, picketed the customer entrances, delivery entrance and parking lot of the Safeway store located at 900 Sir Francis Drake Boulevard, San Anselmo, California. Some of the pickets carried signs with legends stating "Seamans Support I. J. Strike". Others carried signs stating "This Longshoreman Supports I. J. Strike".

27. Also on or about October 16, 1970, Respondents, by their pickets and agents, picketed with from twelve to fifteen pickets in the area of the Red Hill Shopping Center in San Anselmo, California, in the vicinity of a store of Safeway, of Longs Drugs (herein called Longs), and Sears Roebuck & Co. (herein called Sears). Such picketing was engaged in with signs which identified the pickets as "Longshoremen" and "Seamen". Among such pickets was a person wearing a button identifying him as a steward for Respondent Local 10.

28. On various occasions since about October 8, 1970, Respondents, and each of them, acting jointly and in concert and participation with each other, and in furtherance and support of Respondent Local 21's dispute with the Journal, have, by picketing, oral appeals, instructions, directions and orders, and by other means, induced or encouraged individuals employed by persons engaged in commerce or in an industry affecting commerce to engage in work stoppages and refusals to perform services for their employers and have threatened, coerced and restrained such persons.

V. The acts and conduct of Rsepondents set forth

in paragraph IV and its subparagraphs 1 through 28, above, have been engaged in by Respondents acting as joint venturers and in concert and participation with each other.

VI. The acts and conduct of Respondents set forth in paragraph IV and its subparagraphs 1 through 28, above, and in paragraph V, above, have been engaged by Respondent labor organizations and the individual Respondents named herein acting as joint venturers and in concert and participation with each other.

VII. By the acts and conduct described in paragraph IV and its subparagraphs 1 through 28, above, and by other means, Respondents have engaged in, and have induced or encouraged individuals employed by Mayfair, Safeway, Garden City, Lucky, Foremost, various tenants of Red Hill Shopping Center, United Market, Ritz, Rath Packing Company, Armour & Company, American Poultry, McDermott Meats, Mace Meat Company, Petrini's, Longs and Sears, by their suppliers, by carriers making deliveries to or pickups from such persons, and by other persons engaged in commerce or in an industry affecting commerce, to engage in, strikes or refusals in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on goods, articles, materials or commodities, or to perform services, and have threatened, coerced and restrained such persons, with an object or objects of:

(1) Forcing or requiring Mayfair, Safeway, Garden City, Lucky, Foremost, various tenants of Red Hill Shopping Center, United Market, Ritz, Rath Packing Company, Armour & Company, American

Poultry, McDermott Meats, Mace Meat Company, Petrini's, Longs and Sears, and other persons, to cease placing advertisements in or to otherwise cease doing business with the Journal;

(2) Forcing or requiring the customers and suppliers of such persons to cease doing business with such persons in order to compel such persons to cease placing advertisements in or to otherwise cease doing business with the Journal.

VIII. By their acts and conduct described in paragraph IV, and its subparagraphs, and paragraphs V through VII, above, Respondents have disobeyed, violated and resisted, and have failed and refused to comply with, and continued to disobey, violate and resist and to fail and refuse to comply with, the injunction orders of this Court entered herein on February 13 and April 28, 1970. Thereby Respondents have been, are, and continue to be, in civil contempt of this Court.

Wherefore, Petitioner prays:

1. That the Court issue an order directing Respondents, and each of them, to file with this Court, and serve a copy upon Petitioner, by a date certain, a sworn answer to the allegations of this petition for adjudication of civil contempt, specifically admitting or denying or meeting by affirmative defense each and every allegation thereof;

2. That the Court issue an order directing Respondents, and each of them, to appear before this Court at a time and place to be fixed by the Court, and show cause, if any there be, why Respondents

should not be adjudged in civil contempt of court for having disobeyed, violated and resisted, and for having failed and refused to comply with, the Court's injunction orders entered herein on February 13 and April 28, 1970;

3. That upon their appearance pursuant to such order to show cause, Respondents be adjudged in civil contempt of this Court;

4. That upon such adjudication, the Court enter an order requiring Respondents to purge themselves of such civil contempt by:

(a) Fully complying with all the terms and provisions of this Court's injunction orders of February 13 and April 28, 1970;

(b) Notifying Mayfair, Safeway, Garden City, Lucky, Foremost, various tenants of Red Hill Shopping Center, United Market, Ritz, Rath Packing Company, Armour & Company, American Poultry, McDermott Meats, Mace Meat Company, Petrinis, Longs and Sears, and all other persons doing business with the Journal whose names may be furnished Respondents by Petitioner, that they are free to continue or resume advertising in or doing business with the Journal without fear of economic or other consequences from Respondents, or any of them, and that Respondents will not, by picketing or in any other manner, or by any other means, induce or encourage any individual employed by any of such firms, or any of their suppliers, or of any carrier making deliveries to or pickups from them, or of any person doing business with them, to engage in any work stoppage or refusal in the course of his employment to perform

work, or in any like or similar manner, threaten, coerce or restrain them, or any of them, or any person doing business with them, in order to force or require any such person to cease placing advertisements in the Journal or to otherwise cease doing business with the Journal.

(c) Posting immediately in the offices of Respondents, and in all places where notices to members of Respondent labor organizations are customarily posted, and maintaining said notices for a period of at least 60 consecutive days, copies of a notice stating that Respondents have been adjudged in civil contempt of this Court for their disobedience of and resistance to, and their failure and refusal to comply with, the injunction orders entered by this Court on February 13 and April 28, 1970, and that Respondents will not repeat the conduct found to have violated the Court's orders, or further engage in, sanction, support or induce or encourage any acts or conduct in violation of said injunction orders; and by making available to Mayfair, Safeway, Garden City, Lucky, Foremost, various tenants of Red Hill Shopping Center, United Market, Ritz, Rath Packing Company, Armour & Company, American Poultry, McDermott Meats, Mace Meat Company, Petrinis, Longs and Sears, trucking companies, common carriers, suppliers and service companies which regularly or customarily make pickups from or deliveries to Journal or such business firms, which may be designated by Petitioner, signed copies of said notices for posting at their places of business if they so desire;

(d) Filing with the Clerk of this Court and by serving copies thereof on Petitioner, within five days

after entry of the order of adjudication in contempt, sworn statements showing in detail the steps taken by Respondents to comply with the Court's order of adjudication in contempt;

(e) Appearing in person before this Court within ten days after entry of the order of adjudication, and, upon two days' notice to Petitioner, showing to the Court that Respondents have complied with the order; and

(f) Paying to the Board, as costs, reasonable counsel fees and all costs and expenditures incurred by the Board in the investigation, preparation, presentation and final disposition of this proceeding to adjudge Respondent in civil contempt, and, in addition thereto, the court costs of this proceeding as taxed by the Clerk of this Court.

5. That the Court fix an appropriate compliance fine to be imposed upon Respondents in the event that Respondents continue or repeat their failure and refusal to comply with the orders of this Court of February 13 and April 28, 1970, or the order of adjudication in contempt of court, or in the event Respondents further fail or refuse to comply with, or violate or disobey said orders.

6. That upon the failure of Respondents so to purge themselves of their contempt, attachment for civil contempt issue against Respondents.

7. That the Court take such other and further action and grant such other and further relief as may be just, reasonable and necessary to make effective the injunction orders of this Court and as the nature of these proceedings in civil contempt may require.

WITH RESPECT TO THE REQUEST FOR INSTITUTION OF, ADJUDICATION IN, AND PUNISHMENT FOR CRIMINAL CONTEMPT

IX. Petitioner, with respect to the request for the institution of, adjudication in, and punishment for criminal contempt, reiterates and alleges, with the same force and effect as though fully set forth herein, each and every allegation hereinabove contained in paragraphs marked I through VII, inclusive.

X. Respondents, and each of them, have engaged in the acts and conduct hereinabove described in paragraph IV, subparagraphs 1 through 28, and paragraphs V through VII, knowingly and wilfully and with intent to defy, disobey, violate and resist the aforesaid orders of this Court, Thereby, Respondents have, and are, in criminal contempt of this Court and its lawful authority.

Wherefore, the Petitioner respectfully requests:

1. That the Court institute, *sua sponte,* a prosecution of Respondents, and each of them, for criminal contempt of this Court;

2. That the Court appoint and designate Milo V. Price, Harvey Letter. Walter L. Kintz and W. David Smullin, attorneys for Petitioner, as counsel for the Court to prosecute the criminal contempt;

3. That the Court issue an order directing each Respondent labor organization, through an officer thereof, and each individual Respondent to appear before this Court at a time and place fixed by the Court and then and there show cause, if any there be, why each should not be adjudged in, and punished

for, criminal contempt of this Court for having wilfully and knowingly, and with intent to do so, defied, disobeyed, violated and resisted the orders of this Court entered on February 13 and April 28, 1970;

4. That upon return of said order to show cause, Respondents be adjudged in criminal contempt of this Court and punished by fine or imprisonment, or both, in such manner as this Court may deem just and proper.

Dated at San Francisco, California, this 19th day of October, 1970.

/s/ Roy O. Hoffman
Roy O. Hoffman,
Regional Director
Region 20
National Labor Relations Board

Arnold Ordman,
General Counsel,
Dominick L. Manoli,
Associate General Counsel,
Julius G. Serot,
Assistant General Counsel,
Harvey Letter,
Regional Attorney, Region 20
/s/ Milo V. Price,
Milo V. Price,
Walter L. Kintz,
W. David Smullin, Attorneys.
National Labor Relations Board

[Title of Court and Cause]

[Filed Oct. 19, 1970]

ORDER DESIGNATING ATTORNEYS TO PROSECUTE CRIMINAL CONTEMPT PROCEEDINGS.

Roy O. Hoffman, Regional Director of the Twentieth Region of the National Labor Relations Board, having filed a petition requesting the Court to institute, *sua sponte,* criminal contempt proceedings against San Francisco Typographical Union No. 21, International Typographical Union, AFL-CIO, and John DeMartini, its Vice President, and Don Abrams, its Organizer; Brotherhood of Teamsters & Auto Truck Drivers Local No. 70, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, and James R. Muniz, its President; Brotherhood of Teamsters & Auto Truck Drivers Local No. 85, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, and Timothy J. Richardson, its Business Manager and Recording Secretary, and Henry Montano, its Business Representative; and International Longshoremen's and Warehousemen's Union, Local No. 10, for having knowingly and wilfully, and with intent to do so, defied, disobeyed, violated and resisted the orders of this Court entered on February 13, 1970, and May 13, 1970 in the cases of Roy O. Hoffman, Regional Director of the Twentieth Region of the National Labor Relations Board, for and on behalf of the National Labor Relations Board, Petitioner, v. San Francisco Typographical Union No. 21, International Typographical Union, AFL-CIO; Freight, Construc-

tion, General Drivers & Helpers Union Local 287, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America; and Brotherhood of Teamsters & Auto Truck Drivers Local No. 85, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Respondents, Civil No. C-70,306; and Roy O. Hoffman, Regional Director of the Twentieth Region of the National Labor Relations Board, for and on behalf of the National Labor Relations Board, Petitioner, v. San Francisco Typographical Union No. 21, International Typographical Union, AFL-CIO, Respondent, Civil No. C-70,895, and the Court having considered the request, it is hereby

ORDERED that Milo V. Price, Harvey Letter, Walter L. Kintz, and W. David Smullin, Attorneys for the National Labor Relations Board, be and they hereby are appointed as counsel to prosecute, on behalf of the Court, the aforesaid San Francisco Typographical Union No. 21, International Typographical Union, AFL-CIO, and John DeMartini, its Vice President, and Don Abrams, its Organizer; Brotherhood of Teamsters & Auto Truck Drivers Local No. 70, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, and James R. Muniz, its President; Brotherhood of Teamsters & Auto Truck Drivers Local No. 85, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, and Timothy J. Richardson, its Business Manager and Recording Secretary, and Henry Montano, its Business Representative; and International Longshoremen's and

Warehousemen's Union, Local No. 10, for criminal contempt of this Court.

Done and ordered at San Francisco, California, this 19th day of October, 1970.

/s/ W. T. Sweigert
United States District Judge

[Title of Court and Cause]

[Filed Oct. 19, 1970]

ORDER TO SHOW CAUSE FOR ADJUDICATION IN CIVIL AND CRIMINAL CONTEMPT

Upon the verified petition of Roy O. Hoffman, Regional Director of the Twentieth Region of the National Labor Relations Board, praying for an adjudication in civil contempt and for other civil relief, and requesting this Court to institute, *sua sponte*, criminal contempt proceedings, and upon all the pleadings and proceedings heretofore had herein, and good cause appearing therefore, it is

ORDERED that Respondents San Francisco Typographical Union No. 21, International Typographical Union, AFL-CIO, its officers and agents, and John DeMartini, its Vice President, and Don Abrams, its Organizer; Brotherhood of Teamsters & Auto Truck Drivers Local No. 70, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, its officers and agents, and James R. Muniz, its President; Brotherhood of Teamsters & Auto Truck Drivers Local No. 85, International Brother-

hood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, its officers and agents, and Timothy J. Richardson, its Business Manager and Recording Secretary, and Henry Montano, its Business Representative; and International Longshoremen's and Warehousemen's Union, Local No. 10, its officers and agents, and each of them, appear before this Court at San Francisco, California, on the 23 day of October, 1970, at 2 p.m. or as soon thereafter as counsel can be heard, and then and there show cause, if any there be, why they should not be adjudged in civil contempt of this Court as prayed in said petition; and

It Is Further Ordered that with respect to the petition for adjudication in civil contempt Respondents San Francisco Typographical Union No. 21, International Typographical Union, AFL-CIO, and John DeMartini, its Vice President, and Don Abrams, its Organizer; Brotherhood of Teamsters & Auto Truck Drivers Local No. 70, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, and James R. Muniz, its President; Brotherhood of Teamsters & Auto Truck Drivers Local No. 85, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, and Timothy J. Richardson, its Business Manager and Recording Secretary, and Henry Montano, its Business Representative; and International Longshoremen's and Warehousemen's Union, Local No. 10, and each of them, file with the Clerk of this Court and serve a copy thereof upon Petitioner at his office located at 450 Golden Gate Avenue, Box 36047 (Room 13062), San Francisco, California 94102, on or before

the 22 day of October, 1970, a sworn answer, specifically admitting or denying, or meeting by affirmative defense, each and every allegation of the said petition.

It Is Further Ordered that Respondents San Francisco Typographical Union No. 21, International Typographical Union, AFL-CIO, and John DeMartini, its Vice President, and Don Abrams, its Organizer; Brotherhood of Teamsters & Auto Truck Drivers Local No. 70, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, and James R. Muniz, its President; Brotherhood of Teamsters & Auto Truck Drivers Local No. 85, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, and Timothy J. Richardson, its Business Manager and Recording Secretary, and Henry Montano, its Business Representative; and International Longshoremen's and Warehousemen's Union, Local No. 10, and each of them, appear before this Court at San Francisco, California, on the 23 day of October, 1970, at 2 p.m., or as soon thereafter as counsel can be heard, and then and there show cause, if any there be, why they, and each of them, should not be adjudged in and punished for criminal contempt of this Court by reason of their having knowingly and wilfully, and with intent to do so, violated, resisted, disobeyed and defied the orders granting temporary injunction of this Court entered herein on February 13, 1970 and April 28, 1970, all as appears from the said petition of Roy O. Hoffman, Regional Director of the Twentieth Region of the National Labor Relations Board, and

It Is Further Ordered that a copy of this order, together with the said petition of Roy O. Hoffman, be served upon Respondents in any manner provided in the Federal Rules of Civil Procedure by a United States Marshal or by a person specially appointed by the Clerk of this Court pursuant to Rule 12 of the Local Rules of Practice of this Court, and that proof of such service be filed herein.

Done at San Francisco, California, this 19th day of October, 1970.

/s/ W. T. Sweigert
United States District Judge

[Title of Court and Cause]

RESPONSE TO ORDER TO SHOW CAUSE FOR ADJUDICATION IN CRIMINAL CONTEMPT

Come now respondents Teamsters Local No. 70 and James R. Muniz, and pursuant to the Order and Adjudication in Criminal Contempt filed herein on December 24, 1970, hereby state the following reasons why penalties should not be imposed:

The said order of December 24, 1970 was fatally defective in that it does not set forth any findings of fact in which the alleged criminal contempt of these respondents is predicated.

1. There is no finding of which one or more, if any, of the alleged acts constituting contempt as set forth in the petition were found to have been committed by these respondents;

2. There is no finding as to what conduct of these respondents is found to have been in violation of this Court's order or orders, or any terms thereof, nor is there finding as to what conduct of these respondents violated what terms of any of this Court's orders;

3. There is no finding as to how any conduct found to have been in violation of any order of this Court can be related to, or brought home to, these respondents.

4. There is no finding as to what order of this Court, if any, or the terms of which order of this Court, if any, these respondents have actual or any notice;

5. There is no finding as to how, if at all, these respondents received actual, or any, notice of said order or orders, or the terms thereof.

Dated: January 20, 1971.

Levy & Van Bourg
By /s/ Victor J. Van Bourg
Victor J. Van Bourg
Attorneys for Said Respondents

[Title of Court and Cause]

PRESENTENCE REPORT AND RECOMMENDATIONS

Pursuant to request of the Court, the following presentence report and recommendations are submitted by the Petitioner in the above-entitled action:

I. Court injunctions issued against respondents under Section 10(1) of the National Labor Rela-

tions Act on application of the National Labor Relations Board:

A. *Teamsters Local 85*

1. Civil No. 48799—Injunction issued by Judge Weigel, March, 1968.
2. Civil No. 50341—Injunction issued by Judge Wollenberg, December, 1968.
3. Civil No. 50342—Injunction issued by Judge Wollenberg, December, 1968.
4. Civil No. 50444—Injunction issued by Judge Wollenberg, February, 1969.
5. Civil No. 52116—Injunction issued by Judge Levin, September, 1969.
6. Civil No. C-69-95 RFP—Injunction issued by Judge Peckham, October, 1969.
7. Civil No. C-70-857 ACW—Injunction issued by Judge Wollenberg, May, 1970.
8. Civil No. C-70-306 LHB—Injunction issued by Judge Burke, February, 1970.
9. Civil No. C-70-952 SAW—Injunction issued by Judge Peckham, May, 1970, finding that "Local 85 has demonstrated a persistent disposition and proclivity" for violating Section 8(b)(4)(B) of the Act.
10. Civil No. C-70-1037 OJC—Temporary Restraining Order issued May 15, 1970 by Judge Carter and continued by subsequent order restraining Local 85 from engaging in any picketing, etc., where an object thereof is to cause any person to cease doing business with any other person in San Francisco or San Mateo Counties. (The order remains in effect.)

B. *Teamsters Local 70 and Teamsters Local 85*

1. Civil No. 52169—Injunction issued by Judge Levin, September, 1969.
2. Civil No. C-70-2720 SC—Injunction issued January 6, 1971.

C. *Local 21*

1. Civil No. C-70-306 LHB—Injunction issued February, 1970.
2. Civil No. C-70-895 WTS—Injunction issued April, 1970.

D. *Local 10*

1. Civil No. 94679—Injunction issued by Judge Burke.

II. Prior contempt findings against Respondents:

A. Respondent Local 21, in Civil No. C-70-895 WTS, was, on June 24, 1970, found in contempt of this Court's order of April 28, 1970.

B. Respondent Local 85, in Civil No. 52116, was, on December 5, 1969, found by Chief Judge Harris of this Court to be in civil contempt of the Temporary Injunction issued in that case in September 1969.

C. Respondent Richardson, in Civil No. 52116, was, on December 5, 1969, found in civil contempt of this Court's order issued September 26, 1969.

D. Respondent Abrams, in Civil No. 70-895-WTS, was, on June 24, 1970, found in civil contempt of this Court's order of April 28, 1970.

III. Financial condition of Respondent Unions as reflected by reports filed with the U.S. Department of Labor (copies of reports attached):

A. *Respondent Local 21*

Net assets as of May 31, 1970—$389,259

B. *Respondent Local 70*

Net assets as of December 31, 1969—$510,741

C. *Respondent Local 85*

Net assets as of December 31, 1969—$215,448

IV. Damages suffered by five of the twenty-six business establishments affected by Respondents' picketing and other conduct:

Affidavits attached hereto reflect damages and expenses incurred by these firms amounting to $27,201.06. Additional claims for damages are anticipated. Also attached is a memorandum of law by Counsel for Food Employers' Council relating to reimbursement for such damages and expenses.

V. Claim for reimbursement of costs and expenses of the National Labor Relations Board for the prosecution of the civil contempt proceedings will be submitted in due course.

RECOMMENDATIONS WITH RESPECT TO IMPOSITION OF PUNISHMENT FOR CRIMINAL CONTEMPT

I. *Imprisonment*

Although Petitioner considers the contumacious conduct of respondents as having been of extremely serious nature, and has given great consideration to recommending the imposition of both fines and imprisonment for the individual respondents, he is presently of the view that the authority and dignity of the Court can as well be vindicated by the imposition of substantial fines only. Accordingly, provided substantial fines are imposed, Petitioner does not recommend imprisonment of the individual respondents, recognizing, however, that the Court has discretion in this matter.

II. *Fines*

Petitioner recommends the imposition of the following fines against respondents:

A. That each individual respondent be fined a sum of not less than $5,000.

B. That each union respondent be fined a sum of not less than $25,000.

Respectfully submitted,
/s/ Milo V. Price
Milo V. Price
Attorney for Petitioner

January 21, 1971

U.S. DEPARTMENT OF LABOR
Office of Labor-Management and Welfare-Pension Reports
Washington, D.C. 20210

LABOR ORGANIZATION ANNUAL REPORT

FORM LM-2

Form approved by Bureau of the Budget No. 44-R1132.1

READ INSTRUCTIONS CAREFULLY BEFORE PREPARING REPORT

1. NAME OF LABOR ORGANIZATION (as shown on charter, constitution, etc.)
BROTHERHOOD OF TEAMSTERS & AUTO TRUCK DRIVERS

2. PERIOD COVERED BY THIS REPORT — From: Month 1 Day 1 Year 69 — To: Month 12 Day 31 Year 69

3. LM FILE NO. 010997

4.a. AFFILIATION
BROTHERHOOD OF TEAMSTERS

4.b. UNIT DESIGNATION (Local, Lodge, etc.)
LOCAL UNION

4.c. UNIT NUMBER
70

5. CITY, COUNTY AND STATE WHERE CHARTERED TO OPERATE
OAKLAND (City) | ALAMEDA (County) | CALIF. (State)

6. MAILING ADDRESS: (For official mail to the Union)
(c/o) NAME OF PERSON
NUMBER AND STREET: 70 HEGENBERGER ROAD
CITY: OAKLAND, STATE: CALIFORNIA ZIP CODE: 94621

7. Are records kept at address listed in Item 6? If "NO", give address in Item 18. [X] YES [ ] NO

DURING THE REPORTING PERIOD DID YOUR ORGANIZATION DIRECTLY OR INDIRECTLY:

		Yes	No
8.	Have any accounts in banks or other financial institutions held in a name other than that of your organization?	[ ]	[X]
9.	Liquidate or reduce any liabilities without disbursement of cash?	[ ]	[X]
10.	Create or participate in the administration of any business enterprises or other organizations which met the definition of a "subsidiary organization" as that term is defined in the instructions on page 2?	[ ]	[X]
11.	Acquire any goods or property in any manner other than by purchase or dispose of such property in any manner other than by sale?	[ ]	[X]
12.	Create or participate in the administration of a trust or other fund or organization, a primary purpose of which is to provide benefits for members or their beneficiaries as defined by Section 3(l) of the Act?	[X]	[ ]

INDICATE BELOW ANY CHANGES IN THE LABOR ORGANIZATION INFORMATION REPORT (LM-1) WHICH HAVE NOT BEEN PREVIOUSLY REPORTED

		Yes	No
13.	Does the address in Item 6 represent a change?	[ ]	[X]
14.	Has there been a change in officers?	[X]	[ ]
15.	Have there been any other changes?	[ ]	[X]

AS OF THE END OF THE REPORTING PERIOD

16.	Were any assets pledged as security or encumbered in any other way?	[X]	[ ]
17.	Did your organization have any contingent liabilities?	[ ]	[X]

(If the answer to any of the above questions, other than 13 and 14, is "Yes," details must be provided in Item 18 below. See specific instructions for items which have been answered "Yes.")

18. ADDITIONAL INFORMATION

Item No.	
12	Teamsters Union Local #70 70 Hegenberger Road Oakland, California Sick Benefit Fund File #138712 Group Insurance Fund #138712
12	Teamsters Security Fund 25 Taylor Street San Francisco, California Administers Trust Funds to provide members with welfare and pension benefits
16	Building Mortgage $383,159 Equipment Contracts 1,123

(If more space is needed, attach additional sheets with further statement, properly identified.)

Each of the undersigned officers of the above labor organization declares that he is the officer required to sign this report and that the information contained on this report and any accompanying documents, is to the best of his knowledge and belief, true, correct, and complete

71. SIGNED: Lamar R Mann, PRESIDENT (If other title, cross out and write in correct title above.) at Oakland, Calif (City, State) on 4/20/70 (Date)

72. SIGNED: R N Lenderson, TREASURER (If other title cross out and write in correct title above) at Oakland, Calif (City, State) on 4/20/70 (Date)

Form LM-2 (Rev. 3/68) Page 1

BEST COPY AVAILABLE

STATEMENT OF ASSETS AND LIABILITIES

Item	ASSETS	Sch	A: Start of Reporting Period	B: End of Reporting Period	Item	LIABILITIES	Sch	C: Start of Reporting Period	D: End of Reporting Period
19	Cash on Hand		$ 580	$ 832	29	Accounts Payable		$ 4,286	$ 604
20	Cash in Banks		135,248	95,534	30	Loans Payable	6	1 722	
21	Accounts Receivable				31	Mortgages Payable		404 534	383 159
22	Loans Receivable	1	8 845	8 325	32	Other Liabilities	4		1 123
23	U.S. Treasury Securities		5,000	5 000	33	TOTAL LIABILITIES		$ 410 542	$ 384 886
24	Mortgage Investments								
25	Other Investments	2							
26	Fixed Assets	5	837 727	785 936		NET ASSETS			
27	Other Assets	3			34	Net Assets (Item 28 less Item 33)		$ 576 858	$ 510 741
28	TOTAL ASSETS		$ 987 400	$ 895 627					

STATEMENT OF RECEIPTS AND DISBURSEMENTS

Item	CASH RECEIPTS	Sch	A	Item	CASH DISBURSEMENTS	Sch	B
35	Dues		$ 1 013 742	52	Per Capita Tax		$ 233 331
36	Per Capita Tax			53	Fees, Fines, Assessments, etc		
37	Fees		90 299	54	To Affiliates of Funds Collected on Their Behalf		
38	Fines			55	For Account of Affiliates		2,465
39	Assessments		535	56	To Officers	8	
40	Work Permits				(a) Gross $ 275 022		
41	On Behalf of Affiliates for Transmittal to Them				(b) Less Deductions 46 465		228 557
42	Sale of Supplies			57	To Employees	9	
43	Interest		4 890		(a) Gross $ 167 546		
44	Dividends				(b) Less Deductions 30 285		137 261
45	Rents		875	58	Office and Administrative Expense		49 474
46	Loans Obtained	A		59	Educational and Publicity Expense		3 600
47	Sale of Investments and Fixed Assets	7		60	Professional Fees		17 253
48	Repayment of Loans Made	1	520	61	Benefits	11	259 788
49	From Members for Disbursement on Their Behalf		6 754	62	Loans Made	1	
50	From Other Sources	13	19 172	63	Contributions, Gifts and Grants	12	3 138
51	TOTAL RECEIPTS (Items 35 through 50)		$ 1 136 787	64	Supplies for Resale		
				65	Purchase of Investments and Fixed Assets	10	10 776
				66	Taxes		132 591
				67	On Behalf of Individual Members		6 780
				68	Repayment of Loans Obtained	6	1 722
				69	For Other Purposes	14	89 513
				70	TOTAL DISBURSEMENTS (Items 52 through 69)		$ 1 176 249

SCHEDULE 1—LOANS RECEIVABLE

Name of Officer, Employee, Member or Business Enterprise	Purpose of Loan, Security, if any, and Arrangement for Repayment	A: Loans Made During Period	B: Repayments Received During Period	C: Balance at End of Period
McKinney & Harmony	2nd Deed of Trust held on on sale of San Leandro Building		520	8 325
Loans not listed above				
Totals of Items 1 through 7		NONE	520	8 325
(Enter the totals of columns (A), (B), and (C) on Item 22 on page 2 as shown)		A2	48	22

Form LM-2 (Rev. 3/68) Page 2

[illegible]

SCHEDULE 2—OTHER INVESTMENTS (See instructions, Item 25)

Description (A)	Amount (B)
Marketable Securities	
1 Total Cost	$
2 Total Book Value	
3 Itemize each Marketable Security holding over $1,000 whose book value exceeds 20% of the total on line 2 above	
(a)	
(b)	
(c)	
(d)	
Other Investments	
4 Total Cost	
5 Total Book Value	
6 Itemize each Other Investment holding over $1,000 whose book value exceeds 20% of the total on line 5 above.	
(a)	
(b)	
(c)	
(d)	
7 Total of lines 2 and 5	$ NONE
(Enter the total in item on page 2 as shown)	25

SCHEDULE 3—OTHER ASSETS (See instructions, Item 27)

Description (A)	Book Value (B)
1.	$
2.	
3.	
4	
5.	
6. Total of lines 1 through 5	$ NONE
(Enter the total in item on page 2 as shown)	27

SCHEDULE 4—OTHER LIABILITIES (See instructions, Item 32)

Description (A)	Amount at End of Period (B)
1.	$
2. Equipment Contract	1,123
3.	
4.	
5	
6.	
7.	
8.	
9. Total of lines 1 through 8	$ 1,123
(Enter the total in item on page 2 as shown)	32

SCHEDULE 5—FIXED ASSETS (See instructions, Item 26)

Description (A)	Cost or Other Basis (B)	Total Depreciation (if any) (C)	Book Value (D)
1. Land (Give Location) 70 Hegenberger Rd.- Oakland, California	$ 188,608		$ 188,608
2. Buildings (Give Location) 70 Hegenberger Rd.- Oakland, California	586,467	$ 40,989	545,478
3. Automotive Equipment	74,095	22,245	51,850
4. Office Furniture and Equipment			
5. Other Fixed Assets			
6. Totals of lines 1 through 5	$ 849,170	$ 63,234	$ 785,936
(Enter the total of columns (D) in item on page 2 as shown)			26

SCHEDULE 6—LOANS PAYABLE

Source (A)	Arrangements for Repayment (B)	Loans Obtained During Period (C)	Repayment of Loans During Period (D)	Balance at End of Period (E)
1. Bank - Insurance Premium		$	$ 822	$
2 Bank - Equipment			900	
3.				
4				
5 Total from Additional Listings, if any				
6 Total of lines 1 through 5		$ NONE	$ 1,722	$ NONE
(Enter the total(s) of columns (C), (D), and (E) on items on page 2 as shown)		40	60	30

SCHEDULE 7—SALE OF INVESTMENTS AND FIXED ASSETS (See instructions, Item 47)

Description of Asset Sold (If Land or Building, Give Location) (A)	Cost (B)	Book Value (C)	Gross Sales Price (D)	Amount Realized (E)
1.	$	$	$	$
2.				
3.				
4				
5 Totals of lines 1 through 4	$	$	$	$ NONE
(Enter the total of column (E) on item on page 2 as shown)				47

From LM 2 / 1 / Page 1

BROTHERHOOD OF TEAMSTERS AND AUTO TRUCK DRIVERS
LOCAL NO 70
70 HEGENBERGER ROAD
OAKLAND, CALIFORNIA 94621

LM - 010997
94-0577280

LM 2 - 109
PAGE 4 - SCHEDULE 8

Name	Status	Title	Salary	Allowance	Expense	Total
J. R. Muniz	N	Pres.	$ 8,436	$ 2,450	$ 1,005	$ 11,891
A. N. Leishman	C	Secy-Treas.	15,401	3,925	1,320	20,646
S. Botetho	N	V.Pres.	2,449	806	5	3,260
R. Durossette	N	Rec.Secy.	3,429	1,913	91	5,433
S. F. Royster	P	Pres.	6,383	1,421	917	8,721
J. R. Ramos	P	V.Pres.	1,631	125	41	1,797
L. C.Pyne	P	Rec. Secy.	2,113		6	2,119
R. Rocha	C	Trustee	2,848	1,200		4,048
A. Soto	C	Trustee	2,729	1,200		3,929
J. P. Sweeney	N	Trustee	1,371	725		2,096
S. A. Marinkovich	P	Trustee	622	500		1,122
L. R. Acosta	P	Bus.Rep.	5,745	1,300	700	7,745
J. A. Arino	C	Bus. Rep	12,856	3,232	1,598	17,686
M. P. Bigenho	P	Bus. Rep.	5,989	1,000	652	7,641
R. L. Decker	P	Bus. Rep.	1,925	200	134	2,259
E. F. DeCosta	P	Bus. Rep	5,041	1,150	298	6,489
W. C. Fagundes	C	Disp.	12,601	1,200		13,801
A. J. Fialho	N	Disp.	7,695	725		8,420
R. S. Freitas	C	Bus.Rep.	12,601	2,585	1,590	16,776
C. D. Mack	C	Bus.Rep.	12,611	2,700	1,458	16,769
J. A. Murphy	C	Disp	12,601	1,200		13,801
L. R. Nunes	C	Bus.Rep.	12,601	2,900	1,404	16,905
E. H. Painter	C	Bus.Rep	12,601	2,400	1,425	16,426
L. D. Riga	C	Bus.Rep	12,601	2,500	1,850	16,951
W. Rodgers	N	Bus.Rep	7,591	1,450	649	9,690
R. Sarmento	C	Bus. Rep	12,601	2,600	950	16,151
R. Windsor	N	Bus.Rep	7,591	1,850	945	10,386
A. R. Ybarrolaza	N	Bus.Rep.	7,591	1,450	931	9,972
R. Colliver	P	Warden		300		300
J. Kanaby	P	Warden	915	420		1,335
M. H. Bapiste	N	Conductor	37	420		457
L. H. Windsor	P	Conductor				
			$211,206	$45,847	$17,969	$275,022

BEST COPY AVAILABLE

BEST COPY AVAILABLE

ELEMENT 6—DISBURSEMENTS TO OFFICERS (See Instructions, Item 34)

Name (A)	Title (B)	No. of Hrs. (C)	Gross Salary (before taxes and other deductions) (D)	Allowances (E)	Other Direct and Indirect Disbursements: Expenses (including Reimbursed Expenses) (F)	Other Disbursements (G)	Total (H)
1.			$	$	$	$	$
2.							
3.							
4.							
5.							
6.							
7. Total from additional listings, if any			211 206	45 847	17 969		275 022
8. Totals of lines 1 through 7			$ 211 206	$ 45 847	$ 17 969	$	$ 275 022

(Enter the total of column (H) in item on page 2 as shown) ..... 36(a)

SCHEDULE 9—DISCLOSEMENTS TO EMPLOYEES (See Instructions, Item 37)

Name (A)	Position (B)	Name of Affiliated Organization (if applicable) (C)	Gross Salary (before taxes and other deductions) (D)	Allowances (E)	Other Direct and Indirect Disbursements: Expenses (including Reimbursed Expenses) (F)	Other Disbursements (G)	Total (H)
1. L. Hansen	Off. Mgr.		$ 12 141	$	$	$	$ 12 141
2.							
3.							
4.							
5. Total from Additional Listings, if any							
6. Total for all employees who, during the reporting period, received $10,000 or less gross salary, allowances, and other direct and indirect disbursements			147 301	49 89	31 15		155 405
7. Totals of lines 1 through 6			$ 159 442	$ 49 89	$ 31 15		$ 167 546

(Enter the total of column (H) in item on page 2 as shown) ..... 37(a)

SCHEDULE 10—PURCHASE OF INVESTMENTS AND FIXED ASSETS (See Instructions, Item 63)

Description of Assets (If land or buildings, give location) (A)	Book Value (B)	Amount Paid (C)
1. Office Equipment Contract	$ 5 251	$ 3 662
2.		
3. Office Equipment	7 114	7 114
4.		
5.		
6. Totals of lines 1 through 5	$ 12 365	$ 10 776

(Enter the total of column (C) in item on page 2 as shown) 65

SCHEDULE 11—BENEFITS (See Instructions, Item 61)

Type of Benefit (A)	To Whom Paid (B)	Amount (C)
1. Group Life	Ins. Co.	$ 112 808
2. Welfare & Pension	Fund	46 144
3. Comp. Ins.	Fund	4 656
4. Sick Benefits	Members	98 180
5. Total of lines 1 through 4		$ 259 788

(Enter the total in item on page 2 as shown) 61

SCHEDULE 12—CONTRIBUTIONS, GIFTS AND GRANTS (See Instructions, Item 63)

Type (A)	Amount (B)
1. Civic & Charities	$ 2,350
2. Political	100
3. Labor	425
4. Testimonial	263
5. Total of lines 1 through 4	$ 3,138

(Enter the total in item on page 2 as shown) 63

SCHEDULE 13—OTHER RECEIPTS (See Instructions, Item 30)

Other Services (A)	Amount (B)
1. Expense Reimbursements	$ 15 759
2. Out-of-Work Benefits	2 495
3. Other	918
4.	
5.	
6. Total of lines 1 through 5	$ 19 172

(Enter the total in item on page 2 as shown) 53

SCHEDULE 14—OTHER DISBURSEMENTS (See Instructions, Item 69)

Other Purposes (A)	Amount (B)
1. Air Travel	$ 3 280
2. Committee & Meetings	22 060
3. Building Expense	17 133
4. Building Mortgage	47 040
5.	
6. Total of lines 1 through 5	$ 89 513

(Enter the total in item on page 2 as shown) 69

Form SSA-3 (Rev. 2/66) Page 4

The Order and Adjudication in Criminal Contempt dated December 24, 1970, is contained in the Memorandum filed by the Government in October, 1974, at Page 23a and is not reprinted here.

The Findings of Fact and Conclusions of Law Re: Criminal Contempt Proceedings dated January 21, 1971 is contained in the Memorandum filed by the Government in October, 1974, at Page 26a and is not reprinted here.

The Decision of the United States Court of Appeals for the Ninth Circuit is attached as an Appendix to the Petition for a Writ of Certiorari and is not reprinted here.

The Order Denying Rehearing by the United States Court of Appeals for the Ninth Circuit is attached as an Appendix to the Petition for a Writ of Certiorari and is not reprinted here.

[Order Granting the Petition for a Writ of Certiorari]

The petition for a writ of certiorari is granted limited to Questions 3 and 4 presented by the petition which read as follows:

"3. Whether petitioners, charged with criminal contempt for an alleged violation of an injunction issued under the National Labor Relations Act, are entitled to a trial by jury under 18 U.S.C. § 3692, which provides that alleged contemnors are entitled to a jury trial in all contempt cases 'arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute.'

"4. Whether Article III, Section 2 and the Sixth Amendment to the Constitution mandate a jury trial where a penalty of $25,000.00 is assessed against a labor organization in a criminal contempt proceeding."

REPORTER'S TRANSCRIPT

[Oct. 23, 1970]

[Mr. Beeson] [p. 10] * * * I might remind Your Honor, there is a special statutory provision which guarantees the right of a jury in a criminal contempt proceeding in violation of an order of a labor dispute, and it is very likely that provision would be brought into play in this case.

And I would also remind Your Honor, in view of that statutory right to a jury trial, in the historic and right to a speedy trial in a criminal matter, for all of these reasons, it is appropriate and necessary to have the criminal matter taken up first and have the civil proceeding deferred until such time as there is a conclusion to that matter.

That summarizes our position in this respect. I have had to put this together hurriedly because of the show cause order. If Your Honor desires, I know of at least one case which is applicable here—I can file points and authorities if Your Honor feels it is necessary to do so.

Mr. Van Bourg: With respect to the clients on whose behalf we are appearing, we would join in the motion as well as the comments and arguments of Mr. Beeson. * * *

[Nov. 3, 1970]

[p. 89] * * * The Court: All right.

The motions to quash will be denied.

The motion previously made for a jury trial by the respondents will be denied. Memorandum will be filed by the Court in due course setting forth the reasons for the denial.

As indicated yesterday to counsel, I grant the motion for a severance of the proceedings to the extent that I indicated yesterday in the record.

* * *

[p. 104] * * * Mr. Beeson: Yes, Your Honor.

I want to make a motion which is a pro forma just to protect the record. I am afraid as the record stands now it may show that we were not appearing for all purposes but only specially at the time that the motion for a jury trial was made. So I would like the record to show that at this time, since Your Honor has now decided the motions to quash this, that we do make a motion for a jury trial in this matter with respect to the criminal aspect.

The Court: That motion for the record will be denied.

[p. 105] Mr. Van Bourg: Your Honor, may the record show that on behalf of Mr. Muniz and Local 70 we join in that motion.

Mr. Leonard: We do too, Your Honor.

The Court: And the motion as joined in is denied.

* * *

[December 23, 1970]

[p. 3] * * * The Court: All right. In this matter the record will show all parties present and represented. Now, this matter is submitted. The Court, therefore, will, without further ado, render its decision on the matters involved in this proceeding.

* * *

In respect to Teamsters Local No. 70, my finding of guilt beyond a reasonable doubt as to them is based not **[p. 4]** only upon the evidence as to what was done by one Muniz and other people connected with the union and by the union itself, but also upon the fact that knowledge of the orders in question by both Muniz and by Local No. 70 can be, in my opinion, inferred beyond a reasonable doubt from the circumstantial evidence of the collaboration between Muniz, the president of the one Teamsters Union, and Richardson, the secretary and business manager and recording secretary of the other.

* * *

[p. 5] The Court: Abrams. Yes. Now, I, at this time, am going to postpone the imposition of any punishment or penalty as to any of those unions found

guilty beyond a reasonable doubt of contempt and subject to penalty until these unions have an opportunity to present anything that they wish by way of extenuation before any penalty is imposed. And I'm going to set a time for hearing on that, and I'm going to question counsel for those unions and those individuals to present to me anything that they wish by way of extenuating circumstances so that penalty imposed may be neither too great nor too light and I'm going to ask the Board to present to me such information as they wish concerning the penalties which should be imposed in this matter. This can be done by all of the parties after the manner of a submission of material in respect to a presentence report.

[January 21,1971]

[p. 3] * * * The Court: This is the time fixed for a judgment in this matter, rather these matters, one of which is a criminal proceeding and the other is a civil proceeding.

The Court refers to its order and adjudication in criminal contempt dated 24 December 1970 in which the Court found that the allegations of the petition filed herein on October 19, 1970, particularly the allegations of Paragraphs 3 and 4, all of which allegations are hereby incorporated by reference therein, have been proved beyond a reasonable doubt as to the respondents named below and the facts of such allegations constitute the findings of fact in this **[p. 4]** case as to the respondents named below, and it is hereby ordered, adjudged and decreed that Respondent Local 21, Local 70, Local 85 and individual re-

spondents Abrams, Muniz and Richardson are and have been and they are adjudged to be in criminal contempt of this Court by reason of their willful disobedience of and resistance to, and their willful failure and refusal to comply with the temporary injunction orders of this Court entered herein on February 13, 1970, and on April 28, 1970.

The matter was fixed for today, January 21, for judgment.

At the time of the finding here in question I requested both sides to submit to the Court whatever they wished to present for the assistance of the Court in the matter of imposing judgment in this case.

I find that the petitioner, National Labor Relations Board, did present to the Court herein its presentence report and recommendation dated January 21, and in order to make sure that has been made available to all of the respondents involved in the criminal proceeding, I have requested counsel for the petitioner through my law clerk to serve these papers immediately on counsel for the respondents since it is in the nature of comments concerning judgment in this matter.

The responsibility, however, is entirely upon the Court, not upon the National Labor Relations Board. This is **[p. 5]** merely for the assistance of the Court in this matter.

Have the copies been served?

Mr. Price: Copies have been served on counsel for the respondents.

The Court: The document is not long. It consists of only three pages with certain reports attached

thereto and certain affidavits. The affidavits, however, pertain to the civil matter only and need not be considered so far as this proceeding is concerned.

It is my desire to proceed with the criminal matter first.

I will now sign and file certain findings of fact and conclusions of law herein, or rather, file the document and these findings of fact and conclusions of law should be the——

* * *

[p. 15] The adjudication of December 24 having now been made **[p. 16]** re Criminal Contempt, that adjudication, including findings and supplemental findings in extenso now having been filed by the Court, identical with the findings previously made in the order of December 24—except for some eliminations which the Court believes were not proved as alleged in the petition beyond a reasonable doubt—now is the time for judgment in this matter.

I will ask counsel for the Union to step forward one by one in the criminal proceeding and make any statement they wish to the Court on behalf of the Union which they may wish to make in extenuation or in mitigation.

I will also ask the individual defendants to step forward and I will ask each of the individual defendants in the criminal proceeding if they or any of them have anything they would like to say to the Court before the imposition of judgment in this matter.

You can select your order of appearance in any way you wish.

Mr. Beeson: I have one preliminary matter, Your Honor. I have examined very briefly, in the short time we have had this document, the pre-sentence report and recommendation, so-called, submitted by the petitioner. Some of the information contained in that document is not current or accurate in the sense of being current, and I would like to provide the Court, if I may, with accurate information.

[p. 17] The Court: You are referring to what?

Mr. Beeson: Specifically referring to Page 3, the pre-sentence report and investigation.

Paragraph 3, beginning on Line 15, purports to state the assets of the various respondent unions. The first line is Local 21, Line 19, and the statement there reads that the net assets as of May 31, 1970, are $389,259.

That is not current or accurate information, Your Honor, and I would like to make a short explanatory statement.

The Court: You may.

Mr. Beeson: Yesterday I was called by one of the counsel for petitioners on the telephone and informed that the Court had requested information with respect to the financial standing of respondent local union——

The Court: The Court did not make any request. The Court asked both parties to present whatever information they wished to present in connection with penalties in this matter.

Mr. Beeson: I am only repeating what was said to me over the telephone.

The Court: That may be what they understood.

Mr. Beeson: Perhaps. In any event the inquiry was made to me and I suggested that there was a report annually filed with the Secretary of Labor by labor organizations, and although I didn't know what the fiscal year of the various [p. 18] local unions were, but that perhaps they might look to that if that would be satisfactory, but I would undertake to ascertain more current information in this respect.

I did so with respect to Local 21, called counsel for petitioner and asked that he provide the Court with this information. It appears that he has not.

I would like to report that if the Court is looking for a single figure, as is provided here, is a very misleading figure because many assets are tied up in circumstances where they are not liquid or not available.

The Court: I can understand that.

Mr. Beeson: But the type of figure which is at best very general would be $314,882. As I have indicated, out of that the amount available is extremely small.

In that connection I also submitted to the counsel for petitioner that the books and records of Local 21 show that during the ten or eleven months the union, in terms of current operations had sustained monthly losses without and deviation from that loss pattern.

The loss in December, 1970 was in excess of $10,000 since the strike each month. The union has operated on a net loss figure.

With respect to Local 85 the figure is far more dramatic. The figure given on Line 23 is $215,448. That is a figure dated as of December 31, 1969.

[p. 19] I have had the bookkeeper give me a current statement as of the present time with respect to Local 35. Their actual cash balance is just over $5,000, $5,205, as against which it has current obligations in excess of $15,000, so that on a current basis it is in an insolvent position.

In addition, however, it had a time certificate, time deposit certificate in the amount of $50,000 which, when it becomes available, if it were to be added into what I have told you would leave a net cash figure of in excess of $39,000.

The Court: What is the net asset figure?

Mr. Beeson: $39,000.

The Court: You mean net assets?

Mr. Beeson: Cash, Your Honor.

The Court: I am talking about——

Mr. Beeson: This would be the asset figure.

The Court: What is it?

Mr. Beeson: $39,797.91.

The Court: The value of all assets?

Mr. Beeson: In the name of the union, that is correct, sir. That is all the union has in assets. It has been operating on a net loss figure as well.

The Court: Just a minute, please.

Mr. Price, you furnished reports here from which [p. 20] this figure is derived. Will you point to the figure in the report on which you base this information?

Mr. Price: Yes, Your Honor. This is reflected in the attachments.

The Court: What attachments? They are not numbered or anything. What are they?

Mr. Price: They are reports of the Department of Labor.

The Court: Where are they? Where is the one you refer to?

Mr. Price: If Your Honor will hand me the file I will find it and hand it back to you.

The second page of that report contains the net assets.

The Court: You have opened it up to a page. What do I look to?

Mr. Price: The second page, the next page. This is the first page of the report with respect to Local 85. The second page on the upper right-hand side is the figure of $290,000. Net assets——

The Court: $215,000?

Mr. Price: That is correct.

The Court: That is not assets and there was a report filed by——

Mr. Price: By this union. The last report filed [p. 21] with the Department of Labor was December 31, 1969. It was filed in March of 1970. I assume the next report has not yet been filed.

Mr. Beeson: That is my understanding.

The Court: Assets reported by the union of $215,448, not $39,000 as you said.

Mr. Beeson: I am giving you the current situation as of today. This was over a year ago. This report was filed in March of 1970 and covers the period December 31, 1969, so that is in excess of a year ago.

The Court: Next?

Mr. Beeson: The only other thing I would add is that the union has undertaken a long term contract

commitment in connection with remodeling for a total amount of $39,000. That will not be paid out of cash. It would be funded but it is a commitment which it has undertaken.

The Court: I am sorry you didn't present this in written form to the Court. You were invited to.

Mr. Beeson: I guess the record will have to show, Your Honor. It certainly was not my understanding at all that there was any interest in these matters until I received a call from petitioner's counsel yesterday morning.

The Court: All right. Next?

Mr. Poole: Your Honor a moment ago called for the presence at the lectern of individual respondents. I [p.22] didn't knew whether that was——

The Court: Wait a minute. Is there any response, anything respondent Local 70 wishes to say in connection with judgment in this matter?

Mr. Van Bourg: Yes, Your Honor, there is. I had a great deal to say but we won't say all of it.

Needless to say, Your Honor, I have expressed myself often and you know my feelings and my extreme disappointment at the situation we find ourselves in now. However, I would respectfully direct your attention to this so-called pre-sentence report and recommendation insofar as Local 70 is concerned and to Page 2 thereof under the heading "Court Injunction Issued Against Respondent Union."

Under Section 10(1) of the National Labor Relations there is the "(b) on Page 2.

Teamsters Local 70 and Teamsters Local 85 apparently have had two injunctions issued jointly under

Section 10(1), one in 1969 and one in 1971 with apparently no contempt proceedings involved in either one of those matters.

However, Your Honor, I would like to state for the record that 10(1) injunctions are often issued even when there is no picketing presently in effect. As Your Honor well knows we did not have a chance to see the so-called pre-sentence report or to respond to it or the allegations.

The fact that an injunction has issued doesn't mean [p. 23] there has been insidious conduct. We have to keep recalling that there are certain procedures that the National Labor Relations Board engages in and the wheels of that machinery grind on whether or not there is picketing, and those injunctions are issued even before there has been determination by the National Labor Relations Board that the civil provisions of the Labor-Management Relations Act of 1947 as amended had been violated.

So it is clear that there can be a finding by a trial examiner upheld by the National Labor Relations Board that there was no unfair labor practice and there would still be on the books a 10(1) injunction. But it should be noted that this respondent has never had a 10(1) injunction issued against it as far as this document is concerned by itself.

I do not know what these cases are since I was not the attorney of record in either Case No. 52169 or C-70, C-72 OSC. I don't know what the situation was. I don't have the slightest idea.

On Page 3 there is a statement on prior contempt findings against respondent. I assume that meant in

10(1) injunction cases—I am not sure because it could be all cases. (a) is Local 21, (b) is Local 85, (c) is Respondent Richardson and (d) is Respondent Abram.

There is no mention of either Local 70 or Muniz.

[p. 24] Page 3 deals with financial conditions of respondent unions as reflected by a report filed with the United States Department of Labor. I did not understand, Your Honor, that we were supposed to present financial details. We also received a call in our office. I was not in the office but my associate, Stewart Weinberg, received a telephone call yesterday. I don't know whether it was morning or afternoon. That was from Mr. Smullin asking for a later LM-2 report form filed by Local 70 with the Department of Labor. I do not have that document in my possession nor did I have time to search it out.

If given time we could have presented the present financial picture.

As Your Honor knows, the assets of Local 70 as listed on Page 3, Line 22 of this document—still referring to the pre-sentence report and recommendations, or so-called—are the net assets as of December 31, 1969 as listed on the LM-2 report form filed by Local 70 with the Department of Labor as required by the Labor-Management Reporting Act. It is not a statement of the assets at the present time.

Your Honor is aware of the fact that there has been severe unemployment in the last year. Assets of any local union go down when substantial numbers of its members are out of work. The situation with respect to Local 70 is not a good one financially. The figure is substantially less than the **[p. 25]** item described on Page 3, Line 21.

I cannot give you an exact figure but we can within a reasonable period of time.

However, Your Honor should note that in the document attached to this so-called pre-sentence report dealing with Local 70 that there are many funds which go to make up the assets of a union, not because they are from an accounting standpoint or from a legal standpoint assets, but because for purposes of the wording of the Labor-Management Report and Disclosure Act they are required to be listed as assets.

For example, there is a group insurance fund and a sick benefit fund. These are listed on Page 1 of the report dealing with Teamsters Local 70 attached to the document.

In addition, the so-called $510,000 assets, it is always interesting how we look at assets of unions. If we were looking at the assets of a corporation it wouldn't be quite this candid. Of the $510,000 there is a building, a fixed asset, a building where the union has its headquarters with a meeting hall that is listed as $383,000.

Also I would respectfully call to Your Honor's attention in terms of the financial responsibility of the people involved that there is a page listed here which shows certain salaries. I do not have the explanation on the salary figure but it shows the salary for Mr. J. R. Muniz as president as $8,436, allowances of $2,050 and expenses **[p. 26]** of $1,000 for a total of

under $12,000. Now he is not the executive officer of the union.

The Court: I don't propose to fine the individuals.

Mr. Van Bourg: I think, Your Honor, that if you propose to fine the local union I would like to address myself to the following remarks, and I will be brief.

In 15 years of practice as a labor lawyer before this court and the National Labor Relations Board and other courts, this is the first time in which a client of mine has found himself confronted with this kind of a situation in a criminal contempt case.

And I am mindful of the fact that I have been a trade union member since I have been 16 years of age.

I think it is very important to consider that the rank and file are the ones that have to bear the cost of any obligation placed upon the local union.

The Court: I realize that.

Mr. Van Bourg: They are working men and women and they deal with economic conditions, with giant corporations and not with an even balance of what is right and wrong in a society.

The Court: I understand that.

Mr. Van Bourg: Whatever treasury a local union has is built up through the dues of the members and it is intended to tide them over periods of unemployment and sickness. **[p. 27]** That is why we have a sick and benefit fund. It is also intended to tide them over periods of strife, such as when they have to go out on strike which, despite all protestation to the contrary, is still a legal and moral thing to do and for working men and women to help each other.

Now we find ourselves in this situation, without a clear-cut finding of knowledge—the executive officer of the union is Mr. *Leechman*—the constitution is in the record and shows that he is the executive officer of the union. The constitution shows that no local union can engage in a strike unless it is sanctioned.

The members of a union have placed restrictions on their executive officer so that he cannot call a strike of a local union without sanction and without ratification and approval of the membership. The record is bare of any such ratification of the rank and file of this local union.

As a matter of fact in the minutes that were introduced—and Your Honor will recall under very adverse circumstances we produced those documents—there is nothing in the minutes to show the membership knew of any participation by Local 70 in anything, and indeed, we think that participation was never proven. I don't want to reargue that point but let's assume there is some basis in the record for Your Honor's findings.

It is clear that the membership didn't know, but they **[p. 28]** are going to be required to pay if the local union is indeed fined. So I would respectfully request Your Honor to consider the basic facts involved here that was involved as a desire by management and by the National Labor Relations Board to protect the public interest and to protect the pocketbooks of management.

We have to protect the rights of working people and their pocketbooks, and it is in that regard that we would respectfully request that Your Honor con-

sider there has been no conduct that has been brought before this Court on the part of Local 70 since the day it was served.

We have today filed a document which we ask that you consider that in a prior injunction case that is attached to my affidavit. Did Your Honor read my declaration brought to you this noon, that Local 70 when confronted with an injunction, even though unpopular with its own members, issued a press release asking its members to comply with the injunction?

I submit that if it had known about the injunction here and/or understood it, the same would have taken place.

This union by my affidavit and the press release attached to it has shown that it does indeed respect the orders of this Court.

Your Honor will have to concede, I think, that the two orders that were the subject matter of our discussion **[p. 29]** throughout this lengthy, and I guess unpleasant trial because of the situation that is involved—not unpleasant because individuals made it so—that there were many ambiguous statements in those injunctions, many things that lawyers have difficulty with, let alone laymen, but not a scintilla of evidence in the record that injunction was ever seen, heard of, discussed or notice given to any representative of Local 70.

I think that under those circumstances——

The Court: The evidence is circumstantial, yes, as to knowledge and notice.

Mr. Van Bourg: And that Local 70 is not a party to either injunction and I think that under those

circumstances Your Honor should not fine the local union, that it has suffered tremendous economic burdens by having to defend the trial over 60 calendar days.

The trial started on October 23 and ended on December 24 in Your Honor's chambers. The cost to the local has already been horrendous. We ask you to understand that, particularly in view of the fact that there has been no conduct brought to this Court, and in view of the fact since the date of the service, and in view of the fact that there are many questions raised on the law as well as on the facts in this case that would give rise to serious consideration of any fine against the local union.

The Court: All right.

* * * [Discussion with Counsel for other respondents followed]

[January 22, 1971]

[p. 2717] The Court: All right, whenever you are ready.

The Clerk: Civil Action 70-895, Roy O. Hoffman versus San Francisco Typographical Union No. 21 for further proceedings.

Mr. Price: Ready for the petitioner.

Mr. Van Bourg: Ready for 70 Union.

Mr. Beeson: Mr. Poole and Mr. Beeson are here for the respondents which we represented as previously indicated.

Mr. Leonard: Norman Leonard on behalf of Local 10 in the civil proceeding.

The Court: All right. We had heard, I think, from Mr. Olson. Any of the respondents wish to proceed,

on this question of making any statement they wish to make in respect to mitigation?

Mr. Poole: I think we have nothing further, Your Honor, on behalf of Locals 21 and 85 or on behalf of any of the other respondents.

The Court: Yes. Who was representing Local 21 here?

Mr. Poole: Mr. Beeson.

The Court: Mr. Olson. I mean not his attorney but who is the official here representing Union Local 21.

Mr. Poole: Mr. Olson.

The Court: We will consider Mr. Olson as present

[p. 2718] and has made his statement.

Mr. Poole: That is correct.

The Court: All right. Who is representing 85 as such, the Union?

Mr. Poole: Mr. Richardson was here yesterday, Your Honor, representing Local 85, and I do not see him now, but he was to come. I think he may be just a little bit late.

The Court: Well, may it be considered that any statement Local 85 wishes to make has been made through the counsel?

Mr. Poole: That is correct.

The Court: All right. And who is representing Local 70 here?

Mr. Van Bourg: Mr. James Muniz was here yesterday and he is here today, Your Honor.

The Court: All right. And does he wish to make any statement on behalf, not of himself, but of the Union?

Mr. Van Bourg: No, Your Honor. My remarks were on behalf of the Union.

The Court: All right.

Mr. Poole: Might I make this addition, Your Honor, that the statements Your Honor heard from Mr. Olson yesterday, may they also be applicable to the other union; to represent Teamsters Local 85?

The Court: We will so consider.

[p. 2719] Mr. Poole: Yes.

The Court: Certainly. Is there anything further to come from the respondents, then?

Mr. Leonard: Your Honor's question is directed to the criminal proceedings?

The Court: Yes. It would be a good thing maybe if Mr. Leonard could take a little vacation until we go on to this other proceeding; then he wouldn't have to be bobbing up all the time.

All right.

Yes, do we have any statement on behalf of the petitioner?

Mr. Price: Yes, Your Honor. I will make a brief statement. First, addressing myself to the nature of these proceedings, Your Honor, I wish to again remind the Court that these proceedings involve secondary boycott, not the question of the right of the union to engage in a battle against the employer with which it has a primary dispute. So that many of the statements that this Court has heard yesterday relating to the rights of the employees of individuals, to better working conditions, benefits and their rights to engage in combat with their employer, are completely irrelevant to the proceedings here.

We make no statement as to that. We taken no position as to the right of the unions as against the

employer and the [p. 2720] employer's right against the union in this court in these proceedings.

However, we do wish to point out that in this case, we have had a substantial amount of evidence bearing on the rights of neutrals which were not permitted to be exercised. That is, the rights to continue in business unimpeded by unlawful picketing, unlawful activities, intimidations, threats of various nature and it is this that this proceeding is addressed to.

That is, to prevent the continuation of a secondary boycott, continuation of unfair labor practice, firstly.

Secondly, to vindicate the authority and the dignity of this Court. This Court having issued an order in February of 1970, having again issued an order in April of 1970, both of those orders having been violated, and that same conduct having also constituted a violation of the National Labor Relations Act, an act which Congress felt important to the flow of commerce, to the protection of public interests.

It is the obligation of the Labor Board under the Act, it is the obligation of the Court to see that the provisions of that act, with the intent that Congress has carried out, that the dignity of the Court is preserved, that its authority is restored and, for that, we have made a recommendation. The Court has made findings, the Court has made conclusions of law. We feel that those should stand and [p. 2721] the recommendation of the petitioner, at least in the minutes, should be given serious consideration by the Court.

Now, directing some attention to the comments concerning the financial status of the labor organizations involved. Each one has had an opportunity to present

to this Court their present financial condition. This, they have not done. We have filed with the Court the most recently available report, and that has been served upon counsel in this case. No contrary information has been furnished, however some of the unions, as Mr. Beeson indicated, that the assets currently are substantially less than those reflected by our report. We find that somewhat incredible and certainly not substantiated.

* * *

[p. 2724] Mr. Price: Local 70 now.

The Court: All right. Stay with it, then.

Mr. Price: Local 70.

The Court: What about it?

Mr. Price: It's the fourth page of the Local 70 report.

The Court: What about it?

Mr. Price: It shows the salaries paid to officers and number one on that list is J. R. Muniz.

The Court: Where is this, Page 4?

Mr. Price: The fourth page of the —

The Court: What's the heading? Disbursements to officers?

Mr. Price: The very top line is Brotherhood of Teamsters and Auto-Truck Drivers Local 70. It's typed in. It's a typed sheet that was appended to it.

The Court: Just a minute. Oh, I see. That is a typed page. Yes, I have it. What about it?

Mr. Price: It shows a salary of Mr. Muniz of $8450 and expenses of $11,891. However, on the fifth line, it shows also a salary to a Mr. Oyster (phonetic spelling) who is also characterized as president, of $6383.

The Court: Pardon me. What's this got to do with it? **[p. 2725]** Is this—the salaries have got something to do with it?

Mr. Price: Well, the argument yesterday was made by Mr. Van Bourg that this union pays an extremely low salary to its officers and to Mr. Muniz.

The Court: All right.

Mr. Price: I want to call to the attention of the Court the salary.

The Court: I am just interested in the net worth. I am not going into an accounting of the salaries they pay their officers.

Mr. Price: Your Honor, the petitioner considers the violations of the Act here, absent orders of this Court, as having been extremely serious in nature. This is not a minor frolic engaged by unions. This was a deliberate course of conduct, well planned, well defined and petitioner feels that the sanctions for it and for the transgressions incurred should be substantial and, in that connection, we have filed our recommendations and we ask the Court to give serious consideration to it.

The Court: All right. Fine. Anyone else wish to be heard? [Other counsel are heard]

[The imposition of judgment on the same date is contained as Appendix E to the Government's Memorandum for Respondent, dated October, 1974 and is not reprinted here].

Office-Supreme Court, U. S.
FILED
JUL 5 1974
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1924

JAMES R. MUNIZ and BROTHERHOOD OF TEAMSTERS AND AUTO TRUCK DRIVERS LOCAL NO. 70, IBTCHWA,

Petitioners,

—v.—

ROY O. HOFFMAN, Director, Region 20, National Labor Relations Board,

Respondent.

BRIEF OF THE CENTER FOR CONSTITUTIONAL RIGHTS AND THE LABOR COMMITTEE OF THE NATIONAL LAWYERS GUILD IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

NANCY STEARNS
c/o Center for Constitutional Rights
853 Broadway
New York, New York 10003
(212)674-3303

JAMES LARSON
ARTHUR KINOY
c/o National Lawyers Guild
23 Cornelia Street
New York, New York 10014
(212)255-8028

Attorneys for Amici.

INDEX

	PAGE
STATEMENT OF INTEREST ----------	2
PRELIMINARY STATEMENT ----------	4
REASONS FOR GRANTING WRIT --------	6
I. THE ISSUE RAISED BY PETITIONERS CONCERNING THEIR RIGHT TO A JURY TRIAL IS ONE OF TREMENDOUS IMPORTANCE EXTENDING FAR BEYOND THIS CASE. ----------	6
II. THE RULING OF THE LOWER COURT WAS WITHOUT SUPPORT AND WAS IN ERROR. ----------	10
CONCLUSION ----------	15

TABLE OF AUTHORITIES CITED

Cases	Pages
Brotherhood of Local Firemen and Enginemen v. Bangor & Aroostook R.R. Co., 380 F.2d 570 (D.C. Cir. 1967), cert. denied 389 U.S. 327 (1967)	11, 13
In Re Union Nacional de Trabajadores, No. 74-1073	6, 15
Madden v. Grain Elevator, Flour & Feed Mill Workers, 334 F.2d 1014 (7th Cir. 1964)	11, 13
N.L.R.B. v. Red Arrow Freight Lines, 193 F.2d 979 (5th Cir. 1952)	12, 13
Schauffler v. United Assoc. of Journeymen, 230 F.2d 572 (3rd Cir. 1956), cert. denied 352 U.S. 825 (1956)	11, 12, 14
United States v. Williams, ___ U.S. ___ (1974), 42 LW 2606	15

TABLE OF STATUTES

Norris La Guardia Act of 1932, 29 U.S.C. §§101-115	8, 11, 14
29 U.S.C. §111, Section 111	7, 8, 9, 11
Taft Hartley Act, 29 U.S.C. 141 et seq	5, 6, 8, 10
28 U.S.C. 160(1), Section 10(1)	8, 10, 11, 12, 13
18 U.S.C. §3962	4, 5, 6, 7, 9, 11, 13, 14, 16

AUTHORITIES

Congressional Record, 79th Cong., 1st Sess., p.5513	7
Congressional Record, 79th Cong., 1st Sess., p.5515	8

IN THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1973

NO.

JAMES R. MUNIZ and BROTHERHOOD OF TEAMSTERS AND AUTO TRUCK DRIVERS LOCAL NO. 70, IBTCHWA,

Petitioners,

vs.

ROY O. HOFFMAN, Director, Region 20, National Labor Relations Board,

Respondent.

BRIEF OF THE CENTER FOR CONSTITUTIONAL RIGHTS AND THE LABOR COMMITTEE OF THE NATIONAL LAWYERS GUILD IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

The Center For Constitutional Rights and the Labor Committee of the National Lawyers Guild as amicus curiae respectfully submit this brief in support of

the Petition for Writ of Certiorari, and urge this Court to grant the Petition.

STATEMENT OF INTEREST

The Center For Constitutional Rights is a non-profit, tax exempt legal and educational corporation dedicated to advancing and protecting the rights and liberties guaranteed by the Bill of Rights to the Constitution.

Although the Center was born of the struggles of the civil rights movement in the south during the 1960's, its work has extended to many other important areas of civil rights and constitutional law.

In recent years the Center's work in widely publicized criminal cases has led it to be concerned with the right of a criminal defendant to trial by jury.

In addition, as a result of its representation of members of labor unions

throughout the United States and in Puerto Rico, the Center has been especially concerned with the rights of unions to a jury in criminal contempt.

The National Lawyers Guild is a professional association of more than 4,000 members. Since its inception in 1937, the Guild has actively supported those who are struggling against oppression. Throughout its history, the Guild as a whole has particularly made the legal representation of union and workers' organizations a high priority.

The Labor Committee of the National Lawyers Guild has as one of its purposes the task of addressing itself to important questions in the development of labor law which affect workers' demands, rights and actions.

We are, therefore, particularly interested in cases like the instant case.

A workers' right to a jury trial in a contempt proceeding, arising from an injunction in a labor dispute, is an issue of national implications, having an effect far beyond this particular controversy.

The Center For Constitutional Rights and the Labor Committee of the National Lawyers Guild, therefore, submit this amicus curiae brief as they have frequently done in similar cases, where the issues presented to the Court are of broad public significance.

PRELIMINARY STATEMENT

Petitioners have presented several questions to this Court for review regarding the decision of the court below affirming their convictions for criminal contempt. Amici will address themselves to only one of those issues - whether 18 U.S.C. §3962 provides a jury trial

for criminal contempt arising out of the Taft-Hartley Act.

18 U.S.C. §3962 states as follows in pertinent part:

> In all cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the contempt shall have been committed. 18 U.S.C. §3692 (emphasis supplied)

In affirming petitioners' contempt convictions, the court below ruled that the statute provides a jury only for contempts arising out of the Norris-LaGuardia Act and not for "all contempts arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute." Amicus contends that in so ruling, the

court below ignored the plain wording of the statute,and therefore the intention of Congress,without any sound basis for its decision.

REASONS FOR GRANTING THE WRIT

I. THE ISSUE RAISED BY PETITIONERS CONCERNING THEIR RIGHT TO A JURY TRIAL IS ONE OF TREMENDOUS IMPORTANCE EXTENDING FAR BEYOND THIS CASE.

In asking this Court to review the decision of the court below, petitioners have brought before this Court the question of whether 18 U.S.C. §3692 provides a trial by jury in criminal contempt cases arising under the Taft-Hartley Act. This question is one of tremendous importance to unions not only throughout the United States, but in Puerto Rico as well. */

*/ The question is of such importance to unions today that unions representing workers in widely diversified industries joined together in amicus curiae before the First Ciruit in its consideration of the same issue. In Re Union Nacional de Trabajadores, No. 74-1073 in which the (fn. continues on next page)

The important protection of a jury trial in criminal contempts arising in a labor context was first established in 1932 with the passage of Section 11 of the Norris-LaGuardia Act. 29 U.S.C. 111. Jury trials were provided in order to protect the right of American working people to organize and was a direct response to "...the injustices and the abuse of power on the part of some of the federal judges." Statement of Rep. Fernandez, Cong.Rec. p.5513, 79th Cong., 1st Sess.

(fn. continued from preceding page)
United Electrical, Radio & Machine Workers of America (UE); the International Union of Electrical, Radio & Machine Workers, AFL-CIO-CLC; Amalgamated Meat Cutters & Butcher Workmen of North America, AFL-CIO; the International Longshoremen & Warehousemen's Union; The Gulfcoast Pulpwood Assoc.; District 65, Distributive Workers of America; Local 1199, Drug & Hospital Employees Union; Newspaper Guild of N.Y., Local 3, AFL-CIO; and Local 306, Moving Picture Machine Operators Union, IATSE, AFL-CIO, filed a brief amicus curiae arguing the applicability of 18 U.S.C. §3692 to criminal contempts arising out of the Taft-Hartley Act.

The provision of a jury in criminal contempts was expressly designed to end the situation in which the judge "...became the prosecuting officer, the jury and the judge all rolled up in one." Statement of Rep. Schneider, Cong.Rec. p.5515, 79th Cong., 1st Sess.

In 1947 the Taft-Hartley Amendments to the National Labor Relations Act were passed, reviving the use of injunctions against unions. The passage led to widespread vocal protest by the unions.

In 1948, aware of this protest by the unions, the Congress, in recodifying the Code of Criminal Procedure, re-enacted the jury provision previously contained in the Norris-LaGuardia Act and changed the wording so as to provide trial by jury in "all cases of contempt arising under the laws of the United States governing the issuance of injunctions or res-

training orders in any case involving or growing out of a labor dispute," 18 U.S.C. §3692, rather than only in "cases arising under sections 101-115 of [the Norris-LaGuardia] Act." 29 U.S.C. 111 (repealed).

In 1932 when the Norris-LaGuardia Act was passed, the National Labor Relations Board was the agency which protected developing unions from the excesses of employers and the courts. With the enactment of Taft-Hartley, it became the agency which initiates prosecutions for criminal contempt against unions for violations of injunctions. Indeed, this change in the role and function of the Board supports the argument that in recodifying 29 U.S.C. 111 the jury provision was broadened to account for the new powers of the NLRB to initiate proceedings which mightlead to criminal contempt. To interpret the recodification and broadening of language

of the statute otherwise, would render not only the changes, but the statute itself meaningless, since today virtually all criminal contempts arising out of labor disputes arise under the authority of the Taft-Hartley Act.

Finally, today the Board has been using its Taft-Hartley powers, including that of initiating criminal contempt, to harass and weaken unions which aggressively represent the interest of their members. The situation has therefore recently begun to resemble that of the early 1930's when Congress found it necessary to protect unions with the right to trial by jury in criminal contempt.

II. THE RULING OF THE LOWER COURT WAS WITHOUT SUPPORT AND WAS IN ERROR.

The decision of the court below is based on one argument - that providing a

jury trial for criminal contempt in cases arising under the Norris-LaGuardia Act would impliedly mean the repeal of Section 10(1) of the Taft-Hartley Act, 28 U.S.C. 160(1), which sets forth the procedure to be followed when an unfair labor practice has been charged.*/ In so concluding, the court relied on the cases of Brotherhood of Local Firemen & Enginemen v. Bangor & Aroostook R.R. Co., 380 F.2d 570 (D.C. Cir., 1967) cert. denied 389 U.S. 327 (1967); Madden v. Grain Elevator, Flour & Feed Workers, 334 F.2d 1014 (7th Cir., 1964); Schauffler v. Uni-

*/ Amici seek herein merely to urge this Court to grant certiorari and give full consideration to the issue of the interpretation of §3692. We therefore shall not present the entire range of substantive arguments supporting the view that §3692 provides a jury trial for criminal contempts arising out of the Taft-Hartley Act, but at this time will only address ourselves to the argument relied on by the Ninth Circuit below.

ted Assoc. of Journeymen, 230 F.2d 572 (3d Cir., 1956), cert. denied 352 U.S. 825 (1956); N.L.R.B. v. Red Arrow Freight Lines, 193 F.2d 979 (5th Cir., 1952).

Section 10(l) details the procedure to be followed by the board in initiating an investigation, and petitioning the court for injunctive relief pending the Board's final determination of the matter. In addition the section specifies the procedures to be followed in the court before any injunctive relief may be granted. The section is not concerned with the procedures to be followed should the party enjoined allegedly violate the injunction. Thus the provision of a jury trial when a party is charged with criminal contempt for allegedly violating an injunction was at best of indirect relevance to the operations of section 10(l). If anything, the existence of

10(l) and its provision for Board injunctions against unions indicates the need for the safeguard of a jury trial when allegations arise concerning violations of those injunctions. In addition, as the court below concedes, the authorities it cites in support of its conclusion "pertain principally to civil contempts" and therefore their discussions of §3692 are merely dicta.*/

*/ The cases relied on by the court below are distinguishable and provide inadequate basis for the court's decision for other reasons as well.

Brotherhood of Locomotive Firemen & Enginemen, supra, after holding §3692 inapplicable to civil contempts merely notes that §3692 is a recodification of §111 and does not apply to contempts arising out of the Railway Labor Act - an act clearly not at issue here.

Red Arrow Freight Lines deals with the unique situation of a contempt of an order of the Court of Appeals and turns on whether the Court of Appeals had jurisdiction over the contempt if it could not provide a jury trial.

Madden, supra, relies on 29 U.S.C. 160(l) which expressly states that the jurisdiction of the District Court to issue and enforce injunctions and to en-

(fn. continues on next page)

In contrast, in a Petition for Mandamus of the Union Nacional de Trabajadores concerning the interpretation of §3692 the First Circuit has stayed a trial for criminal contempt pending its consideration of the question and has ordered a reply by both the United States Attorney

(fn. continued from preceding page)

force orders of the NLRB shall not be limited by the provisions of the Norris-LaGuardia Act, 29 U.S.C. 101-115. In a direct contrast to that express limitation, §3692 expressly broadens the reach of the jury provision. What is more, §160 (1) does not relate in any way to criminal contempts arising out of injunctions. Rather, it regulates the jurisdiction of the court sitting in equity only.

Finally, the Third Circuit opinion in Schauffler cited by the court below does not even reach the question of § 3692. It was discussed in the opinion of the District Court which held §3692 inapplicable to civil contempts. In addition, the District Court sought to differentiate between labor disputes and unfair labor practices. The error of using any such distinction as the basis of a limitation of the right to trial by jury under §3692 is discussed by Petitioners. Their arguments are fully supported by amici and therefore will not be repeated herein.

and the NLRB to the petition. In Re Union Nacional de Trabajadores, No. 74-1073. That court must see the issue as a substantial one in spite of the ruling of the Ninth Circuit below, for although it has had all papers of the parties before it since April 17, 1974 (and has stayed the criminal trial since March 15, 1974) at the date of the submission of this brief it has still not ruled.

CONCLUSION

Only this term this Court has reaffirmed the importance of the guarantee of jury trials in the context of civil litigation. United States v. Williams, ___ U.S. ___ (1974) 42 LW 2606. The guarantee of a jury trial in a criminal context is of equally great if not greater importance whether that guarantee be based on the constitution or statute.

Since a jury trial is of such cri-

tical importance to working men and women today and since the decision of the court below is based on such meager and inappropriate foundation, amici urge this Court to grant the Petition for Certiorari herein and give full consideration to this question of the applicability of 18 U.S.C. §3692.

Respectfully submitted,

NANCY STEARNS
c/o Center For Constitutional Rights
853 Broadway
New York, N.Y. 10003
(212)674-3303

JAMES LARSON
ARTHUR KINOY
c/o National Lawyers Guild
23 Cornelia Street
New York, N.Y. 10014
(212)255-8028

Attorneys for Amici

Dated: New York, N.Y.

Supreme Court, U. S.
FILED
AUG 28 1974
MICHAEL RODAK, JR., CLERK

In the

Supreme Court of the United States

October Term, 1973

No. 73-1813

International Longshoremen's and Warehousemen's Union, Local No. 10,

Petitioner,

vs.

Roy O. Hoffman, Director, Region 20, National Labor Relations Board,

Respondent.

No. 73-1924

James R. Muniz and Brotherhood of Teamsters and Auto Truck Drivers Local No. 70, Ibtchwa,

Petitioners,

vs.

Roy O. Hoffman, Director, Region 20, National Labor Relations Board,

Respondent.

On Petitions for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Brief for Respondent, California Newspapers, Inc., d/b/a San Rafael Independent Journal, in Opposition

Nathan R. Berke
One Embarcadero Center
San Francisco, California 94111
Counsel for Respondent California Newspapers, Inc.

Severson, Werson, Berke & Melchior
One Embarcadero Center
San Francisco, California 94111
Of Counsel

SORG PRINTING COMPANY OF CALIFORNIA, 346 FIRST STREET, SAN FRANCISCO 94105

SUBJECT INDEX

	Page
Opinions Below	2
Jurisdiction	2
Questions Presented	2
Argument	2
I. The Evidence Demonstrating the Participation of Petitioner Local 10	3
II. The Evidence with Respect to the Participation of Local 70	6
III. Petitioners Had Notice of the Injunctions	6
IV. The Evidence Supports the Finding of Civil Contempt Against Local 10	7
V. The Injunctions May Not Be Collaterally Attacked	10
VI. The Injunctions Enjoined the Activities Engaged in	10
VII. No Jury Trial Was Mandatory	14
Conclusions	16

TABLE OF AUTHORITIES CITED

Cases	Pages
Adickes v. S.H. Kress & Co., 39 U.S. 144, 90 S.Ct. 1598 (1970)	14
Baldwin v. New York, 399 U.S. 66, 90 S.Ct. 1886 (1970)	15
Bloom v. Illinois, 391 U.S. 194, 88 S.Ct. 1477 (1968)	15
Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70 (Sam-Joe, Inc. d/b/a Smiser Freight Services), 174 NLRB 98 (1969)	13
Cheff v. Schnackenberg, 384 U.S. 373, 86 S.Ct. 1523 (1966)	14, 15
City of Campbell Mo. v. Arkansas-Missouri Power Co., 65 F.2d 425 (C.A. 8, 1933)	9
Cliett v. Hammonds, 305 F.2d 565 (C.A. 5, 1962)	8, 10
Dyke v. Taylor Implement Mfg. Co., 391 U.S. 216, 88 S.Ct. 1472 (1968)	15
Frank v. United States, 395 U.S. 147, 89 S.Ct. 1503 (1969)	14, 15
Green v. United States, 356 U.S. 165, 78 S.Ct. 632 (1958)	15, 16
Hoffman v. Local 10, Longshoremen (D.C. No. D. Calif. 1966) 61 LRRM 2339	13
Holland Furnace Co. v. Schnackenberg, 381 U.S. 924, 85 S.Ct. 1559	15

	Pages
ILWU, Local 10 (Howard Terminal), 147 NLRB 359	13
ILWU, Local 10, (Johnson Lee, et al), 155 NLRB 1231	13
ILWU, Local 10 (Matson Navigation Co.), 140 NLRB 449	13
In re Jersey City Education Ass'n., 115 N.J. Super. 42, 287 A.2d 206	16
In the Matter of Local 825, Int'l. Union of Operating Engineers, Et al, 57 LRRM 2143 (C.A. 3, 1964) cert den., 379 U.S. 934, 85 S.Ct. 326	16
Int'l Longshoremen's and Warehousemen's Union, Local 10 (Pacific Maritime Assn. & Milton Moore), 121 NLRB 938 (1958)	13
Jersey City Education Association Et al v. New Jersey, 404 U.S. 948, 92 S.Ct. 268 (1971)	16
Johansen v. Longshoremen (California Cartage Co.), 80 LRRM 2521 (DC No. D. Calif. 1972)	13
McComb v. Jacksonville Paper Co., 336 U.S. 187, 69 S.Ct. 497 (1949)	12
NLRB v. Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70, 490 F.2d 87 (C.A. 9, 1973)	13
NLRB v. Erkkila (DC No. D. Calif. 1958) 42 LRRM 2594	13
NLRB v. ILWU, Local 10, 214 F.2d 778 (C.A. 9, 1954)	13
NLRB v. ILWU, Local 10, 283 F.2d 558 (C.A. 9, 1960)	13
NLRB v. Int'l Longshoremen's and Warehousemen's Union, Local 10, 210 F.2d 581 (C.A. 9, 1954)	13
N.L.R.B. v. Radcliffe, 211 F.2d 309 (C.A. 9, 1954), cert. den. 348 U.S. 833, 75 S.Ct. 56	6
Oriel v. Russell, 278 U.S. 358, 49 S.Ct. 173 (1929)	8, 9

Pages

Petition of Curtis, 240 F.Supp. 475, affmd. sub nom Ford v. Boeger, 362 F.2d 999 (C.A. 9, 1966), cert. den. 386 U.S. 914, 87 S.Ct. 857, rehearing den. 386 U.S. 978, 87 S.Ct. 1160 10

Schauffler v. Local 1291, Internat'l Longshoremen's Assn., 292 F.2d 182 (C.A. 3, 1961) 8
Schmegmann Bros. Giant Super Markets v. Hoffman-La Roche, Inc., 221 F.2d 326 (C.A. 5, 1955), cert. den. 350 U.S. 839, 76 S.Ct. 77 10
State v. Taylor, 353 U.S. 553, 77 S.Ct. 1037 (1957) 14

Teamsters Local 70 (Granny Goose Foods), 195 NLRB No. 102, 79 LRRM 1448 (1972) 13
Teamsters Local 70 (Sam-Jo. Inc.), 197 NLRB No. 46, 80 LRRM 1354 (1972) 13
Teamsters, Local 70 (Sea-Land of Calif.), 197 NLRB No. 24, 80 LRRM 1300 (1972) 13

United States v. ILWU, Local 10 (DC No. D. Calif. 1971) 78 LRRM 2841 13
United States v. United Mine Workers of America, 330 U.S. 258, 67 S.Ct. 677 (1947) 10

Walker v. City of Birmingham, 388 U.S. 307, 87 S.Ct. 1824 (1967) 6, 10

STATUTES

F.R. Crim. P. 42(b) 8

Labor Management Relations Act, 1947, as amended:
Section 8(b)(4)(B) 3, 11
Section 10(1) 3

National Labor Relations Act:
§§ 10(j) and 10(1) 17

Page

CONSTITUTION

United States Constitution:
Article III, § 2 16
Sixth Amendment 16

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1813

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL NO. 10,

Petitioner,

VS.

ROY O. HOFFMAN, DIRECTOR, REGION 20, NATIONAL LABOR RELATIONS BOARD,

Respondent.

No. 73-1924

JAMES R. MUNIZ and BROTHERHOOD OF TEAMSTERS AND AUTO TRUCK DRIVERS LOCAL NO. 70, IBTCHWA,

Petitioners,

VS.

ROY O. HOFFMAN, DIRECTOR, REGION 20, NATIONAL LABOR RELATIONS BOARD,

Respondent.

On Petitions for a Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

Brief for Respondent, California Newspapers, Inc., d/b/a San Rafael Independent Journal, in Opposition

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 492 F.2d 929. Contrary to the statements in the petitions, the District Court did render an opinion in the form of detailed findings of fact and conclusions of law. The District Court on December 24, 1970, entered an order and adjudication, adjudging Petitioners, among others, in civil contempt and an order and adjudication on the same date adjudging Petitioners in No. 73-1924, among others, in criminal contempt as well (R. 1194-1205).

On January 21, 1971, the District Court entered its findings of fact and conclusions of law in the criminal contempt proceeding as supplementary to and *in extenso* of its December 24, 1970, order and adjudication in that proceeding (R. 1249-1262).

On January 28, 1971, the District Court having reopened the civil contempt proceeding to allow Petitioner in No. 73-1813 to introduce additional evidence on its behalf, reaffirmed its order and adjudication in civil contempt as to all contemnors and entered its findings of fact and conclusions of law (R. 1308-1321).

JURISDICTION

The jurisdictional requisites are set forth in the petitions.

QUESTIONS PRESENTED

We adopt the questions as set forth in the brief in opposition by Respondent Hoffman.

ARGUMENT

While we join in the argument set forth in the brief in opposition by Respondent Hoffman, we here discuss some of the issues as we see them.

Based upon the record and the law, we submit there is no issue presented which raises either a constitutional question or a conflict between circuits. Neither is an issue of first impression of an important question of federal law involved which requires decision by this Court.

I. The Evidence Demonstrating the Participation of Petitioner Local 10.

This Petitioner asserts that the evidence relating to it was "quite insignificant." On the contrary, the evidence was such as to warrant the finding by the District Court of this Petitioner's active participation in the violations of the injunctions. The evidence showed that the Petitioners in both cases actively participated with other labor organizations which were contemnors, in a plan to shut down and starve out an entire county; to deny the denizens of that county the daily necessaries of life by preventing trucks delivering food, food products and other necessaries from coming into the county; and by picketing trucks making deliveries and places of business within the county, by violence, destruction of property, threats and intimidation.[1] All of such activity was contrary to the injunctions issued pursuant to Section 10(1) of the Labor Management Relations Act, 1947, as amended.[2]

The Petitioners were acting in furtherance of the Labor dispute between the San Francisco Typographical Union Local No. 21 ("Local 21") and the California Newspapers,

---

1. That the plan was to shut down all of Marin County by exerting economic pressure against it, to in turn exert pressure on the Independent Journal is established in "The President Reports," column of the October 1970 edition of the "Typographical Bulletin," the official journal of Local 21 (Tr. 2303-2304; Pet. Exh. 220).

2. The injunctions were couched in the statutory language of the secondary boycott provisions of Section 8(b)(4)(B) of the Act [29 U.S.C. § 158(4)(B)].

Inc. d/b/a San Rafael Independent Journal ("Independent Journal") to boycott the county of Marin in which the Independent Journal was published.

The testimony of George Johns, secretary-treasurer of the San Francisco Labor Council revealed that for a period of months in 1970, representatives of the unions involved, *including Local 10,* regularly met at the offices of the Council to discuss their support of the strike by Local 21 against the Independent Journal (Tr. 1886-1890, 1899-1900).

Local 10 actively participated in and jointly sponsored with the other contemnors, a mass march and rally in San Rafael on July 25, 1970, in support of the strike against the Independent Journal. It furnished marchers with transportation by chartering a bus. It furnished free lunches to the marchers and offered "guaranteed . . . work opportunities for those taking part." It also periodically made financial contributions to funds to assist the strike and picketing activities. On September 2, 1970, about a month before the activities in violation of the injunction, Local 10 made an authorized contribution in "support of the coming action by the Labor Support Committee in regards to the strike" (Tr. 2023, 2234-2238; Pet. Exhs. 166, 169, 182).

Local 10 urged its members to "spread the word of boycotting the scabby Independent-Journal and all their advertisers" (Tr. 2245-2246; Pet. Exh. 174). In October 1970, in its official publication, "Longshoremen's Bulletin," after referring to the Independent Journal strike and stating "we must stand behind the strikers," Local 10 went on to state:

> "The AFL-CIO, *ILWU,* Teamsters, United Farmworkers and [sic] Unions are making a *joint effort* to set up formal picket lines outside of Companies that advertise in the Independent Journal. *Any longshoreman who is willing to help can report to the Marin Labor Temple* . . . Remember the next union on strike

> may be your own. *Note: a bus is being arranged to transfer all men wishing to go starting Friday, October 16. The bus will leave about 7:00 AM from the dispatch hall. How about giving a hand!!* (Emphasis added)

On October 16, 1970, one of the days during which the injunctions were violated, Local 10 chartered a bus to transport pickets to San Rafael (Tr. 2022, 2250; Pet. Exhs. 180, 181). That day the pickets in San Rafael carried signs with legends reading "Longshoremen" and "Seamen." Some of the signs read "This Longshoreman Supports I.J. Strike." These pickets engaged in picketing at both customer and delivery entrances of various stores and in shopping centers (R. 545, 563-564, 588; Pet. Exhs. 58, 64, 73-82, 143-145).

Among these pickets carrying a "Longshoreman" sign, was a picket who wore a button identifying him as a steward of Local 10 (R. 545, Tr. 1126, 1129-1130). Two pickets who were served by a deputy United States Marshal with copies of both injunctions while they were on a picket line at one of the stores which advertised in the Independent Journal, identified themselves as Local 10 members and exhibited their union cards (Tr. 985, 995-997, 1025, R. 716).

On October 16, 1970, during the period involved, in a strike report to the membership of Local 21, Abrams the organizer of that union, praised "the ILWU, whose leadership and participation have been absolutely outstanding" (Tr. 2064).

There was other evidence of the close cooperation in the October 1970 events between Local 10 and the other contemnors. Petitioner Muniz, president of Local 70, according to the records of that union, incurred expenses on behalf of Local 10, among others, in connection with the illegal October 1970 activities (Tr. 2026-2028, 2254-2257; Pet. Exhs. 187A-C, 188).

II. The Evidence with Respect to the Participation of Local 70.

As we read the petition of Muniz and Local 70, they admit having engaged in violations of the Act in October 1970, but in an argument worthy of a semanticist, they urge that what they did on that occasion was not prohibited by the injunctions. In view of their admitted participation, we shall forego reciting the facts as to their role in the plan to shut down Marin County.

III. Petitioners Had Notice of the Injunctions.

The law is well settled that in a civil or criminal contempt proceeding, knowledge of the injunction involved, may be established by circumstantial evidence. *Walker v. City of Birmingham,* 388 U.S. 307, 312, n. 4 (1967). In the absence of "direct evidence of knowledge," the trier of fact "may find knowledge from circumstantial evidence . . . if the circumstances are such as to support a reasonable inference." *N.L.R.B. v. Radcliffe,* 211 F.2d 309, 315 (C.A. 9, 1954), cert. den. 348 U.S. 833, 75 S.Ct. 56.

The District Court found that knowledge of the injunctions by Local 70 and Muniz, its president, could be inferred "beyond a reasonable doubt" from the close collaboration between Muniz and the president of Teamsters Local 85, which collaboration was constantly evidenced throughout the entire secondary boycott plan and campaign.[3] As the District Judge stated when sentencing the contemnors, "it would be ridiculous to hold that Mr. Muniz, who was president of Local 70 and over there on the ground taking an active part in it in connection with people from the other

3. One of the injunctions ran against Teamsters Local 85. Neither that Local, its president Richardson, nor San Francisco Typographical Union Local No. 21 and its involved officers all of whom were also found in contempt, have petitioned this Court for a writ of certiorari.

labor unions, didn't know about this order affecting one of its kindred teamster unions" (Tr. 2728).[4]

There was additional evidence which lends credible support to the District Court's finding of knowledge. There was Local 21's widespread and repeated publicity given to the injunctions. There was close cooperation between Local 21 and other unions, including the Petitioners, as we have pointed out, *supra.*

IV. The Evidence Supports the Finding of Civil Contempt Against Local 10.

Local 10 argues that the District Court did not apply the proper quantum of evidence standard in finding it in civil contempt.

The instant case was begun and tried on the basis of the evidence in the criminal contempt case. The District Judge found all of the unions except Local 10, were beyond a reasonable doubt guilty of criminal contempt. Using the same evidence and such additional evidence as the defense adduced, he found all of the unions in civil contempt. Thus, whether "a preponderance of the evidence," as some courts have held or "clear and convincing" evidence as some other courts have held, is the standard, here the evidence which measured up to beyond a reasonable doubt to find all but Local 10 in criminal contempt, was the basis for finding Local 10 in civil contempt. Surely, such evidence is more

4. In their petition (p. 17), Muniz and Local 70, state: "Local 21's dispute with the Independent-Journal cut a broad path. Locals 85, 287 *and possibly 10* were the subject of the first injunctive decree." [emphasis supplied] At least to Muniz and Local 70, there was notice and knowledge of one of the injunctions on the part of Local 10.

than "clear and convincing," if that is the standard as urged by Local 10.[5]

As was said in *Cliett v. Hammonds,* 305 F.2d 565 (C.A. 5, 1962), where the Court reversed the criminal contempt proceeding because of non-compliance with F. R. Crim. P. 42(b), the evidence in that aspect of the case being used for a finding of civil contempt (at 571): "As a finding of civil contempt, the judgment . . . is fully supported."

In *Oriel v. Russell,* 278 U.S. 358, 49 S.Ct. 173 (1929) cited by Local 10, the Court treated of the proof required in "civil fraud" in a bankruptcy proceeding in which the bankrupts were found in civil contempt for disobeying court orders. The judgment was affirmed. In that part of this Court's opinion from which Local 10 quotes partially and out of context, this Court stated (278 U.S. 364):

> "With reference to the character or degree of proof in establishing a civil fraud, the authorities are quite clear that it need not be beyond reasonable doubt, because it is a civil proceeding . . . The Court ought not to issue an order lightly or merely on a preponderance of the evidence, but only after full deliberation and satisfactory evidence, with the understanding that it is rendering a judgment which is only to be set aside on appeal or some other form of review, or upon a properly supported petition for rehearing in the same court."

In the instant case there is "full deliberation" and more than "satisfactory evidence."

---

5. As was pointed out in *Schauffler v. Local 1291, Internat'l Longshoremen's Assn.,* 292 F.2d 182 (C.A. 3, 1961), a case cited by Local 10, some courts have held that the petitioner in a civil contempt proceeding must prove a violation of the court's order by "more than a mere preponderance of the evidence," some have held it must be "a clear preponderance of the evidence," and others have indicated that "a degree of certainty is required which leaves no fair ground of doubt." Whatever the test, it is more than met in the instant case.

This Court in *Oriel v. Russell, supra,* went on to hold (278 U.S. 366-367):

> "In the two cases before us, the contemnors had ample opportunity in the original hearing to be heard as to the fact of concealment, and in the motion for the contempt to show their inability to comply with the turnover order. They did not succeed in meeting the burden which was necessarily theirs in each case, and we think, therefore, that the orders of the Circuit Court of Appeals in affirming the judgments of the District Court were the proper ones."

There remains a comment on one other case cited by Local 10. *City of Campbell Mo. v. Arkansas-Missouri Power Co.,* 65 F.2d 425 (C.A. 8, 1933) from which Local 10 purports to quote from page 428, we are unable to find any such statement by the Court. Local 10 has apparently taken separate phrases out of context from two separate paragraphs and tacked them together to make it appear as if they read as appears in the quote. The language of the Court at 428 is as follows:

> "When it is doubtful whether a decree of injunction has been violated, a court is not justified in punishing for contempt, either criminal or civil, for the reason that no one can say with any degree of certainty that the authority of the court needs vindication or that the aggrieved party is entitled to remedial punishment.[6]
>
> "'Process of contempt is a severe remedy, and should not be resorted to where there is fair ground of doubt as the wrongfulness of the defendant's conduct'."

To find civil contempt, the Court in that case said (at 427):

> ". . . in order to be found guilty of even a civil contempt, it must appear that the appellants were doing some-

---

6. The sentence begins at the bottom of 427.

thing which constituted a violation of the letter or spirit of the injunction."

Here, the evidence is replete with actions by Petitioners which both violated the letter and the spirit of the injunctions.

V. The Injunctions May Not Be Collaterally Attacked.

It is well established by the decisions of this and other courts, that the validity of an injunction order which has been disobeyed is not open in a criminal contempt proceeding to question in the slightest degree. Disobedience constitutes contempt even though such order may be set aside on appeal. *Walker v. City of Birmingham,* 388 U.S. 307, 87 S.Ct. 1824 (1967); *United States v. United Mine Workers of America,* 330 U.S. 258, 67 S.Ct. 677 (1947); *Cliett v. Hammonds,* 305 F.2d 565 (C.A. 5, 1962).

Neither may an injunction in a contempt proceeding be collaterally attacked. *Schmegmann Bros. Giant Super Markets v. Hoffman-La Roche, Inc.,* 221 F.2d 326 (C.A. 5, 1955), cert. den. 350 U.S. 839, 76 S.Ct. 77; *Petition of Curtis,* 240 F.Supp. 475, affmd. *sub nom Ford v. Boeger,* 362 F.2d 999 (C.A. 8, 1966), cert. den. 386 U.S. 914, 87 S.Ct. 857, rehearing den. 386 U.S. 978, 87 S.Ct. 1160.

VI. The Injunctions Enjoined the Activities Engaged in.

Petitioners Muniz and Local 70 argue that the injunctions did not specifically enjoin the activity in which they engaged in, i.e., "inducement of employees of suppliers and delivery drivers."[7] The evidence demonstrated that in addition to such activity, Muniz was present with other pickets

7. Petition in No. 73-1924, pp. 13-15.

at both the customer and loading entrances of a Lucky store in Fairfax in Marin County. The pickets carried signs bearing the legends, "San Rafael Unfair To Teamsters," "Unfair to Teamsters." Muniz told Lucky's transportation supervisor that he (Muniz) had to back Local 21 and that the pickets would be removed if Lucky removed its advertisements from the Independent Journal (R. 536). Among others representing Local 70 in picketing at Lucky's and other stores in Marin County were business agent Nunes, and members William Dawson and John Spratt (Tr. 301, 386-387, 394-395, 468-471, 481-485, 488, 490-491, R. 535; Pet'r. Exhs. 7-9, 12-15, 54, 68-70, 85, 121). At another market, Petrini's, the Temaster pickets besides carrying Teamster signs, also distributed handbills of Local 21 calling for a total boycott of stores advertising in the Independent-Journal (R. 552, 569).

Thus, the activities of Muniz and Local 70 were not just confined to inducement of employees of suppliers and delivery drivers, which activity in itself is a secondary boycott proscribed by Section 8(b)(4)(B) of the National Labor Relations Act and which statutory language was spelled out in the injunctions. Their very presence at the stores with picket signs and their distribution of Local 21's handbills calling for a total boycott of those stores, was threatening, coercive and restraining conduct against the stores and other persons by appealing to consumers not to patronize those stores in violations of the injunctions. It was secondary boycott activity within the language of the injunctions and of the National Labor Relations Act.

Moreover, Muniz and Local 70 were participants in a plan and scheme with the other contemnors to impose a complete boycott on Marin County. Thus, as joint ventures

or co-conspirators with the other contemnors, they were each responsible and liable for the conduct of each other in putting into effect and carrying out that plan and scheme.

Moreover, this Court in dealing with a decree couched in the language of the Fair Labor Standards Act, held that immunity from contempt for violations of the decree could not be claimed because such violations were not specifically enjoined. *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 69 S.Ct. 497 (1949).

The decree in that case enjoined any practices which were violations of the Act. It directed the respondents to obey various provisions of the Act, which were spelled out in the language of the Act. Commenting on the same position as advanced here by Local 70, Mr. Justice Douglas, writing for the majority, stated (69 S.Ct. 500):

> "It does not lie in their mouths to say that they have an immunity from civil contempt because the plan or scheme which they adopted was not specifically enjoined. Such a rule would give tremendous impetus to the program of experimentation with disobedience of the law which we condemned in Maggio v. Zeitz, supra, 333 U.S. at page 69. . . . The instant case is an excellent illustration of how it could operate to prevent accountability for persistent contumacy. Civil contempt is avoided by showing that the specific plan adopted by respondents was not enjoined. Hence a new decree is entered enjoining that particular plan. Thereafter the defendants work out a plan that was not specifically enjoined. Immunity is once more obtained because the new plan was not specifically enjoined. And so a whole series of wrongs is perpetrated and a decree of enforcement goes for naught."

As Mr. Justice Douglas also pointed out (at 500):

> "That result not only proclaims the necessity of decrees that are not so narrow as to invite easy evasion. . . ."[8]

---

8. Petitioners are not novices in the field of secondary boycotts or injunctions. That they do not function in a mileu of naivite with respect to violations of the National Labor Relations Act and of injunctions, is attested to by the many cases in which they have been involved before the National Labor Relations Board and the Courts. *NLRB v. Int'l Longshoremen's and Warehousemen's Union, Local 10*, 210 F.2d 581 (C.A. 9, 1954); *NLRB v. ILWU, Local 10*, 214 F.2d 778 (C.A. 9, 1954); *NLRB v. Erkkila* (DC No. D. Calif. 1958) 42 LRRM 2594; *Int'l. Longshoremen's and Warehousemen's Union, Local 10 (Pacific Maritime Assn. & Milton Moore)*, 121 NLRB 938 (1958); *NLRB v. ILWU, Local 10*, 283 F.2d 558 (C.A. 9, 1960); *ILWU, Local 10 (Matson Navigation Co.)*, 140 NLRB 449; *ILWU, Local 10 (Howard Terminal)*, 147 NLRB 359; *ILWU, Local 10, (Johnson Lee, et al)*, 155 NLRB 1231; *Hoffman v. Local 10, Longshoremen* (D.C. No. D. Calif. 1966) 61 LRRM 2339 (sec. boycott and 10(1) injunction); *United States v. ILWU, Local 10* (DC No. D. Calif. 1971) 78 LRRM 2841 (civil contempt); *Johansen v. Longshoremen (California Cartage Co.)*, 80 LRRM 2521 (DC No. D. Calif. 1972). The latter case involved violations of the secondary boycott and hot cargo provisions. An injunction under section 10(1) was issued. A week after the injunction was issued, the hot cargo provision was reimplimented under another contention by Local 10, which resulted in a further court proceeding broadening the injunction. That situation demonstrates the wisdom of Mr. Justice Douglas' statement, *supra*. *Johansen v. Longshoremen (California Cartage Co.)*, 80 LRRM 2895.

Hoffman v. Locals 70 and 85, Teamsters (DC No. D. Calif. 1969) 72 LRRM 2353 (sec. boycott and 10(1) injunction); *Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70 (Sam-Joe, Inc. d/b/a Smiser Freight Services)*, 174 NLRB 98 (1969, sec. boycott); *Teamsters Local 70 (Granny Goose Foods)*, 195 NLRB No. 102, 79 LRRM 1448 (1972); *Teamsters Local 70 (Sam-Jo, Inc.)*, 197 NLRB No. 46, 80 LRRM 1354 (1972); *Teamsters, Local 70 (Sea-Land of Calif.)*, 197 NLRB No. 24, 80 LRRM 1300 (1972), in which because of "a proclivity to violate the Act," a broad remedial order was issued, which was enforced, *NLRB v. Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70*, 490 F.2d 87 (C.A. 9, 1973).

VII. No Jury Trial Was Mandatory.

Petitioner Local 70 asserts a right to a jury trial because a fine in excess of $500 was imposed upon it.[9]

This Court in *Cheff v. Schnackenberg,* 384 U.S. 373, 86 S.Ct. 1523 (1966) reiterated that the decisions of this Court settled the rule that the right to a trial by jury "does not extend to every criminal proceeding." It was there held that since *Cheff* received a sentence of six months imprisonment, and since the nature of criminal contempt, an offense *sui generis,* does not, of itself warrant treatment otherwise, that *Cheff's* offense can be treated only as "petty" in the eyes of the statute and this Court's prior decisions. So holding, it was concluded that *Cheff* was properly convicted without a jury (86 S.Ct. 1526).

Interestingly enough, this Court pointed out in *Cheff* that the corporation of which *Cheff* was an officer was fined $100,000 in the same contempt proceeding and that the corporation's petition for a writ of certiorari was denied (86

9. While we have undertaken to discuss the jury issue, we believe that Local 70 has no standing to urge that issue. It did not raise it in the Court of Appeals. Muniz cannot raise it because he was neither imprisoned nor fined. He was placed on probation for a year. *Frank v. United States,* 395 U.S. 147, 89 S.Ct. 1503 (1969). In their brief in the Court below, while Muniz and Local 70 state they "join and adopt all of the argument made by counsel for each of the other Labor Organizations and individuals found to be in contempt with respect to procedural, substantive and given [sic] matters," they state their brief "will dwell only on matters that are of particular concern to Local 70 and James Muniz" (Muniz and Local 70 Br., p. 3). No where in that brief do they discuss the jury issue. In their petition for rehearing in the Court of Appeals, they only assert two grounds, (1) notice of the injunctions and (2) the quantum of proof. Thus, they apparently did not regard the jury issue as of "particular concern" to them (Muniz and Local 70 Pet. for Rehearing, pp. 1-2). Petitioners Muniz and Local 70 are in no position to advance such issue now. *Adickes v. S.H. Kress & Co.,* 39 U.S. 144, 90 S.Ct. 1598 (1970); *State v. Taylor,* 353 U.S. 553, 77 S.Ct. 1037, 1039 (1957).

S.Ct. 1523; *Holland Furnace Co. v. Schnackenberg,* 381 U.S. 924, 85 S.Ct. 1559.

Recognizing in *Cheff* that by limiting its decision to cases where a six months sentence was imposed may leave the lower courts "at sea" in instances involving greater sentences, this Court in the exercise of its supervisory power and under the peculiar power of the federal courts to revise sentences in contempt cases, ruled further that sentences exceeding six months for criminal contempt may not be imposed by federal courts absent a jury trial or waiver thereof.

The fact that review was denied the corporation fined $100,000 in the same contempt proceeding and the fact that the court explicitly ruled trial by jury need not be granted in criminal contempt cases where the sentence is six months or less and must be granted where the sentence is more than six months, makes it clear that the amount of the fine does not determine whether a jury trial shall or shall not be granted. It is obvious from *Cheff* that this Court's concern was with deprivation of liberty and not the monetary penalty.

Subsequent decisions of this Court support our position on this issue. See, *Bloom v. Illinois,* 391 U.S. 194, 88 S.Ct. 1477 (1968); *Dyke v. Taylor Implement Mfg. Co.,* 391 U.S. 216, 88 S.Ct. 1472 (1969); *Frank v. United States,* 395 U.S. 147, 89 S.Ct. 1503 (1969); *Baldwin v. New York,* 399 U.S. 66, 90 S.Ct. 1886 (1970). In an earlier decision, not overruled, this Court held that criminal contempts are not subject to jury trial as a matter of constitutional right. *Green v. United States,* 356 U.S. 165, 78 S.Ct. 632, 643 (1958).

Prior to the *Cheff* case, this Court denied review in a non-jury criminal contempt proceeding in which the contemnor, a union, was fined $15,000 and the union's business

manager was fined $5000. *In the Matter of Local 825, Int'l. Union of Operating Engineers, Et al,* 57 LRRM 2143 (C.A. 3, 1964), [10] cert. den., 379 U.S. 934, 85 S.Ct. 326. See also, *In re Jersey City Education Ass'n.,* 115 N.J. Super. 42, 287 A.2d 206, in which a fine of $10,000 was levied against a union in a non-jury criminal contempt proceeding and which this Court declined to review, *sub nom Jersey City Education Association Et al v. New Jersey,* 404 U.S. 948, 92 S.Ct. 268 (1971).

Cheff must, therefore, be read in the light of *Green v. United States, supra* and the historical background therein discussed. So reading *Cheff,* it must be confined to situations where imprisonment is involved in criminal contempt proceedings and not where a fine is imposed. This is so, unless this Court is prepared to upset "a long and unbroken line of decisions involving contempts ranging from misbehavior in court to disobedience of court orders," which "establish beyond peradventure that criminal contempts are not subject to jury trial as a matter of constitutional right," *Green v. United States,* 356 U.S. 183, 78 S.Ct. 642-643.[11]

CONCLUSIONS

There is no constitutional question involved, nor any important question of federal law requiring decision by this Court.

---

10. Does not appear to be reported in the Federal Reporter.

11. N. 14 of *Green, supra,* lists the major decisions of this Court discussing the relationship between criminal contempts and jury trial, in which it was concluded or assumed that such proceedings are not subject to trial by jury under either Article III, § 2, or the Sixth Amendment.

In light of the facts and the law, it is submitted that the petitions for a writ of certiorari should be denied.[12]

Respectfully submitted,

NATHAN R. BERKE
25th Floor
One Embarcadero Center
San Francisco, California 94111
Counsel for Respondent
California Newspapers,
Inc. d/b/a San Rafael
Independent Journal

August 26, 1974.

---

12. Muniz and Local 70 assert that "the fundamental issue raised" in their petition "is the extent to which government by injunction in labor disputes is to be countenanced," (Pet. p. 27). This is not an issue for the Court. It is a matter to be addressed, if anywhere, to Congress. That body has specifically provided for injunctions under the National Labor Relations Act [§§ 10(j) and 10(1); 29 U.S.C. 160(j) and (1)]. We are here only concerned with violations of two injunctions issued under Section 10(1).

Supreme Court, U. S.
FILED
OCT 11 1974
MICHAEL RODAK, JR., CLERK

Nos. 73-1813 and 73-1924

In the Supreme Court of the United States

OCTOBER TERM, 1974

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL NO. 10, PETITIONER

v.

ROY O. HOFFMAN, DIRECTOR, REGION 20, NATIONAL LABOR RELATIONS BOARD

JAMES R. MUNIZ AND BROTHERHOOD OF TEAMSTERS AND AUTO TRUCK DRIVERS LOCAL NO. 70, IBTCHWA, PETITIONERS

v.

ROY O. HOFFMAN, DIRECTOR, REGION 20, NATIONAL LABOR RELATIONS BOARD

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

PETER G. NASH,
General Counsel,
JOHN S. IRVING,
Deputy General Counsel,
PATRICK HARDIN,
Associate General Counsel,
NORTON J. COME,
Deputy Associate General Counsel,
MARVIN ROTH,
Deputy Assistant General Counsel,
National Labor Relations Board,
Washington, D.C. 20570.

INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statutes involved	3
Statement	3
A. The injunction orders of February 13 and April 28, 1970	3
B. The present contempt proceedings	7
1. The procedure followed by the district court	7
2. The district court's findings and orders	9
3. The decision of the court of appeals	12
Argument	13
Conclusion	25
Appendix A	1a
Appendix B	7a
Appendix C	23a
Appendix D	26a
Appendix E	41a
Appendix F	49a
Appendix G	54a

CITATIONS

Cases:	
Bakery Sales Drivers Union v. *Wagshal*, 333 U.S. 437	20
Baldwin v. *New York*, 399 U.S. 66	23
Bloom v. *Illinois*, 391 U.S. 194	22

560-131—74——1

Cases—Continued

	Page
Brotherhood of Locomotive Firemen v. *Bangor & Aroostook Railroad Co.*, 380 F. 2d 570, certiorari denied, 389 U.S. 327	18
Building and Construction Trades Council v. *Alpert*, 302 F. 2d 594	20
Cheff v. *Schnackenberg*, 384 U.S. 373	22
Codispoti v. *Pennsylvania*, No. 73–5615, decided June 26, 1974	23
Duncan v. *Louisiana*, 391 U.S. 145	22
Dyke v. *Taylor Implement Co.*, 391 U.S. 216	22
Fair Lawn Education Ass'n, In re, 63 N.J. 112, 305 A. 2d 72, certiorari denied, 414 U.S. 855	23
Frank v. *United States*, 395 U.S. 147	22
Holland Furnace Co., In re, 341 F. 2d 548 certiorari denied, 381 U.S. 924	23
Jersey City Education Ass'n In re, 115 N.J. Super. 42, 278 A. 2d 206, certiorari denied, 404 U.S. 948	23
Leman v. *Krentler-Arnold Co.*, 284 U.S. 448	17
Local 825, Operating Engineers, In re, 57 LRRM 2143, certiorari denied, 379 U.S. 934	23
Madden v. *Grain Elevator, Flour & Feed Mill Workers*, 334 F. 2d 1014, certiorari denied, 379 U.S. 967	18
McGraw-Edison Co. v. *Preformed Line Products Co.*, 362 F. 2d 339, certiorari denied, 385 U.S. 919	13
National Labor Relations Board v. *District Council of Painters*, #48, 340 F. 2d 107	17
National Labor Relations Board v. *Hopwood Retinning Co.*, 104 F. 2d 302	20
National Labor Relations Board v. *Red Arrow Freight Lines*, 193 F. 2d 979	18

Cases—Continued

	Page
National Maritime Union of America v. *National Labor Relations Board*, 346 F. 2d 411	17
Philadelphia Marine Trade Ass'n v. *International Longshoremen's Ass'n, Local 1201*, 368 F. 2d 932, reversed, 389 U.S. 64	18
Rankin v. *Shanker*, 23 N.Y. 2d 111, 242 N.E. 2d 802, stay denied, 393 U.S. 930	23
Regal Knitwear Co. v. *National Labor Relations Board*, 324 U.S. 9	13
Reich v. *United States*, 239 F. 2d 134, certiorari denied, 352 U.S. 1004	13
San Francisco Typographical Union No. 21 (California Newspapers, Inc. and Emporium-Capwell Corp.), 188 NLRB 673, affirmed, 465F. 2d 53	7
Schauffler v. *Local 1291, International Longshoremen's Ass'n*, 189 F. Supp. 737 (E.D. Pa.), reversed 292 F. 2d 182	18
State v. *Costa*, 11 N.J. 239, 94 A. 2d 303	14
Taylor v. *Hayes*, No. 73–473, decided June 26, 1974	23
Union Nacional de Trabajadores, C.A. 1, No. 74–1073 Original, decided August 14, 1974	21
United States v. *R. L. Polk & Co.*, 483 F. 2d 377	23
United States v. *Robinson*, 449 F. 2d 925	18
United States v. *United Mine Workers*, 330 U.S. 258	24
Walker v. *City of Birmingham*, 338 U.S. 307	13
Statutes:	
Public Law 80–772, Sec. 21, 62 Stat. 866	19
Civil Rights Act of 1957 (Sec. 151, 71 Stat. 638, 42 U.S.C. 1995)	19–20

Statutes—Continued
National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*):
Page
Sec. 8(b)(4)(B) 6, 7, 16, 17, 54a
Sec. 10(h) 19–20, 55a
Sec. 10(j) 21
Sec. 10(*l*) 4, 20, 21, 55a–56a
Norris-LaGuardia Act (47 Stat. 72, 29 U.S.C. 101, *et seq.*): 19
Sec. 4 19
Sec. 5 19
Sec. 7 19
Sec. 9 19
Sec. 10 19
Sec. 11 (repealed by 62 Stat. 862) 18–19, 20, 56a 57a
18 U.S.C. 1(3) 22, 23
18 U.S.C. 3651 22
18 U.S.C. 3692 ..... 3, 17, 18, 19, 20, 21
Miscellaneous:
93 Cong Rec. 4834–4837 21
103 Cong. Rec. 8682–8687 20
103 Cong. Rec. 8688–8691 20
103 Cong. Rec. 12842 12843 20
H. Rep. No. 304, 80th Cong., 1st Sess. 19
Leg. Hist. of the Labor Management Relations Act, 1947 (G.P.O. 1948) 21
S. Rep. No. 105, 80th Cong., 1st Sess 21
2 Wigmore, *Evidence*, § § 245, 261 (3d ed., 1940) 14

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 73–1813

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL NO. 10, PETITIONER

v.

ROY O. HOFFMAN, DIRECTOR, REGION 20, NATIONAL LABOR RELATIONS BOARD

No. 73–1924

JAMES R. MUNIZ AND BROTHERHOOD OF TEAMSTERS AND AUTO TRUCK DRIVERS LOCAL NO. 70, IBTCHWA, PETITIONERS

v.

ROY O. HOFFMAN, DIRECTOR, REGION 20, NATIONAL LABOR RELATIONS BOARD

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. i–xvi)[1] is reported at 492 F. 2d 929. The district

[1] "Pet. App." refers to the appendix to the petition in No. 73–1813. "R." refers to the Clerk's Record, comprising volumes

court's Order and Adjudication in Civil Contempt (R. 1197–1205), Findings of Fact and Conclusions of Law re: Civil Contempt Proceedings (R. 1308–1321), Order and Adjudication in Criminal Contempt (R. 1194–1196), Findings of Fact and Conclusions of Law re: Criminal Contempt Proceedings (R. 1249–1262), Judgment Imposing Fines and Penalties in re: Criminal Contempt (Tr. 2727–2736), and Order re: Reimbursement of Costs and Expenses (R. 1460–1464) are set forth respectively in Appendices A through F, *infra*, pp. 1a–53a.

JURISDICTION

The judgment of the court of appeals was entered on January 25, 1974, and amended on March 7, 1974. Petitions for rehearing and rehearing *en banc* were denied on March 26, 1974 (Pet. App. xvii–xviii). The petition in No. 73–1813 was filed on June 1, 1974, and in No. 73–1924 on June 24, 1974. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. The petition in No. 73–1813 presents these questions:

(a) Whether the district court properly found that petitioner Local 10 had actual notice of and was bound by the outstanding injunctions.[2]

1 through 6 of the record in the court of appeals. "Tr." refers to the Reporter's Transcript, comprising volumes 7 through 28 of that record. "Exh." refers to the exhibits introduced in evidence in the district court.

[2] The petition in No. 73–1924 presents a similar question (Pet. 2, question 1).

(b) Whether the district court applied the proper standard of proof in finding petitioner Local 10 in civil contempt of the injunctions.

2. The petition in No. 73–1924 presents these additional questions:

(a) Whether the injunctions prohibited the conduct found to be contumacious.

(b) Whether 18 U.S.C. 3692 requires a jury trial in a proceeding to adjudge a union and its officers in criminal contempt for having violated injunctions issued by the district court pursuant to Section 10(*l*) of the National Labor Relations Act.

(c) Whether a jury trial was constitutionally required in order to subject the unions to the fines for criminal contempt imposed in this case.

STATUTES INVOLVED

The relevant statutory provisions are set forth in the petition in Nos. 73–1924, pp. 3–4, and in Appendix G, *infra*, pp. 54a–57a.

STATEMENT

A. THE INJUNCTION ORDERS OF FEBRUARY 13 AND APRIL 28, 1970

California Newspapers, Inc., doing business as the Independent Journal (Journal), publishes a daily newspaper of general circulation in Marin County, California. In January 1970, San Francisco Typographical Union Local 21 (Local 21) commenced picketing the Journal's San Rafael, California, publishing plant (Pet. App. ii–iii). On February 11, 1970, the National Labor Relations Board's Regional Direc-

tor, pursuant to a charge filed by the Journal, petitioned the district court under Section 10(*l*) of the National Labor Relations Act for a temporary injunction against Local 21 and Locals 85 and 287 of the Teamsters (Locals 85 and 287). The petition alleged that the named respondents were engaging in a prohibited secondary boycott by, *inter alia,* picketing to induce employees at the Port of San Francisco to refuse to work, with an object of forcing their employers to cease doing business with the Journal (Pet. App. iii).

On the same date, February 11, the district court issued a Temporary Restraining Order and Order to Show Cause (Court Exh. 5), enjoining Local 21, its "officers, representatives, agents, servants, employees, attorneys, and all members, persons and other labor organizations acting in concert or participation with them or any of them * * * until February 13, 1970 at 5:00 p.m. and not longer without the further order of this Court, from * * * continuing to picket at or in the vicinity of Pier 46A at the Port of San Francisco." Specifically, the order enjoined them, *inter alia,* from:

> (b) ENGAGING IN, or by picketing, orders, directions, solicitation, requests or appeals, howsoever given, made or imparted, or by any like or related acts or conduct, or by permitting any such to remain in existence or effect * * * INDUCING OR ENCOURAGING any individual employed by Garden City Transportation Company, Ltd., or by any motor carrier or other person engaged in commerce or in an industry, affecting commerce (other than Journal), TO ENGAGE IN, a strike, slowdown or refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities, or to perform any service; or sanctioning, supporting or promoting any such strike or refusal; or in any such or similar manner or by any other means, * * * THREATENING, COERCING OR RESTRAINING said employers, or any other person engaged in commerce or in an industry affecting commerce (other than Journal)—where in either case AN OBJECT THEREOF is: (1) to force or require Powell River-Alberni Sales Limited (herein called Powell), or any other person, to cease doing business with Journal; * * *.

The order further directed all of the respondents named in the petition to show cause on February 13, why they should not be enjoined as requested in the petition pending the final disposition of the unfair labor practice case by the Board.

On February 13, 1970, a deputy United States Marshal served a certified copy of the Temporary Restraining Order and Order to Show Cause upon petitioner Longshoremen's Union Local 10 (Local 10) by leaving it with the person in charge of Local 10's office at 400 North Point Street, San Francisco, California (Tr. 973–975; Pet. Exh. 121).[3] On the same

[3] Local 10 is the collective bargaining representative of longshore employees at the Port of San Francisco, where the picketing and related conduct took place. In its annual report filed with the United States Department of Labor (Pet. Exh. 121), Local 10 designated its North Point Street Office as its address for receiving official mail, without specifying that such mail be sent in care of any particular official or person.

day, after a hearing, the district court entered a temporary injunction, pending a final disposition by the Board, enjoining all of the named respondents (Locals 21, 85, and 287), their agents, and all other labor organizations acting in concert or participation with them from engaging in the conduct specified in the temporary restraining order which had been served upon Local 10 (R. 426–429).

On April 28, 1970, the Regional Director filed a second petition for a Section 10(*l*) injunction against Local 21, based on charges filed by the Journal and the Emporium-Capwell Corporation. They alleged that Local 21 was further violating Section 8(b)(4)(B) of the Act by picketing and distributing handbills appealing to the public not to patronize various retail stores because they were advertising in the Journal. On the same date, Local 21 consented to the entry of an order as requested in the petition (R. 439–441), enjoining "Local 21 * * * and all members, persons and labor organizations acting in concert or participation with it, * * * pending the final disposition of the matters here involved pending before the [Board] * * *," from engaging in the charged unlawful conduct at the picketed stores or at the premises of other stores advertising in the Journal, or from:

> Threatening, coercing or restraining [the named firms] or any other firm advertising in the Independent Journal, by consumer picketing or by any like or related acts or conduct, where an object thereof is to force or require the said advertisers to cease advertising in the Independent-Journal newspaper or to cease doing business with [the Journal].

Local 21 gave extensive publicity to the injunction and to a subsequent civil contempt proceeding against it.[4] They were the subject of several articles in the "Strike Bulletin" periodically published by Local 21 and distributed to its members. Local 21 made clear to its membership that, with the assistance of Bay area unions such as the Teamsters and the Longshoremen, it would continue to picket and campaign against firms which traded with the Journal, regardless of whether such activity violated the outstanding injunctions. (Tr 2292, 2299; Pet. Exh. 213, 214, 215, 216.)

B. THE PRESENT CONTEMPT PROCEEDINGS

1. The procedure followed by the district court

On October 19, 1970, the Board's Regional Director filed with the district court a petition (R. 459–476), supported by affidavits (R. 477–695), to adjudge Locals 21 and 10, and Teamsters Locals 70 and 85, and certain of their officials, including petitioner Muniz, president of petitioner Local 70, in civil and criminal contempt for their failure to obey the injunctions entered by the district court on February 13 and

[4] Notwithstanding the consent injunction, Local 21 continued to engage in substantially the same picketing. On June 24, 1970, the district court found Local 21 and four of its officials in civil contempt by reason of their refusal to comply with the order. The adjudication (except as to two officials not involved here) and the Board's subsequent decision in the unfair labor practice case, finding that Local 21 had violated Section 8(b)(4)(B) of the Act by its picketing before and after the issuance of the injunction (*San Francisco Typographical Union No. 21 (California Newspapers, Inc. and Emporium-Capwell Corp.)*, 188 NLRB 673), were affirmed by the court of appeals. 465 F. 2d 53 (C.A. 9).

April 28, 1970. The petition charged that the respondents, acting in furtherance of a joint venture, had committed at least 28 violations of the outstanding injunctions. The district court ordered the named respondents to show cause why they should not be adjudged in civil and criminal contempt, and subsequently heard argument on certain preliminary matters, including motions by the respondents for severance of the civil and criminal contempt proceedings, and for a jury trial in the criminal contempt proceeding.

The court denied the motion for a jury trial. Respecting severance, it ruled that it would hear the criminal contempt charge first under the rules of evidence applicable to such proceedings, that the evidence there would be deemed part of the record in the subsequent civil contempt proceeding, and that in the latter proceeding it would receive any additional evidence which the parties might offer which would be admissible in a civil contempt proceeding (Tr. 106–107, 115).

The district court heard testimony on the contempt petition between November 3 and December 15, 1970, when the Board completed the presentation of its case. The Board introduced no evidence on the civil contempt beyond that introduced with respect to the criminal contempt. Respondents participated fully in the contempt proceedings, cross-examined Board witnesses and presented argument on the evidence and the law; however, petitioners Local 70, Muniz, and Local 10 declined to present any evidence (Tr. 2609–2615).

Pursuant to its ruling at the outset of the hearing, the court held that the record in the criminal contempt proceeding would be considered as part of the record in the civil contempt proceeding; the parties agreed that the latter record stood as "submitted * * * for purposes of passing on the issue of civil contempt * * *" (Tr. 2640–2641).

After the district court rendered its judgment, finding all respondents to be in both civil and criminal contempt, Local 10 contended that it had not rested its case as to the civil contempt (Tr. 2646). The court thereupon set aside the adjudication in civil contempt and reopened the matter to receive further evidence (Tr. 2742). All of the respondents except Local 10 declined to submit additional evidence (Tr. 2742, 2750). The court received in evidence an affidavit by the President of Local 10 stating in substance that he had no knowledge of the outstanding injunctions until after the alleged contumacious conduct (Tr. 2749; R. 1230). The court then reaffirmed the adjudication of civil contempt as to all respondents.

2. The district court's findings and orders

The district court found, with respect to the allegations of both civil and criminal contempt, that all of the respondents "[o]n or about, or prior to October 7, 1970 * * * embarked upon a joint plan, program and campaign to create a boycott of goods, materials, commodities and services destined to, consigned to, or utilized by firms advertising in the Jour-

nal or to firms doing business with the Journal" (Apps. B, D, *infra,* pp. 13a, 31a); that "in furtherance and support of their aforesaid joint plan, program and campaign" they engaged in numerous acts of picketing, oral inducement of work stoppages, threats and harassment (*id.* at 13a–19a, 31a–37a); and that by such acts and conduct they induced and encouraged employees of retail stores and other picketed firms to engage in work stoppages, and "threatened, coerced and restrained" the firms, with the object of forcing them to cease advertising in the Journal or otherwise doing business with the Journal or each other, and forcing their customers and suppliers to cease doing business with them (*id.* at 19a–20a, 37a–39a).[5]

[5] Respondents' widespread campaign of picketing, threats, harassment, and oral inducement of neutral employees to engage in work stoppages, resulted in a largely successful effort to "quarantine" Marin County and its more than 200,000 inhabitants, by shutting off deliveries of foodstuffs and other goods (Tr. 2055, 2298–2299; Pet. Exh. 216). Although the campaign was initially organized by Local 21 (R. 480–485), much of the picketing and related conduct was committed by agents and members of Teamsters Locals 70 and 85. In particular, Local 70 president Muniz and his counterpart, Local 85 business manager Richardson, worked closely together throughout the campaign (see, *e.g.*, R. 485–486, 496–497, 639–642). Moreover, in October 1970, Local 10 announced in its official publication, "Longshoremen's Bulletin," that "The AFL–CIO, ILWU, Teamsters, United Farmworkers * * * are making a joint effort to set up formal picket lines outside of Companies that advertise in the Independent Journal"; it solicited the help of its members (Tr. 2497-2500; Pet. Exh. 175). On October 16, 1970, Local 10 transported its members and those of the Seafarers' Union to Marin County, where they picketed retail stores (Tr. 2497–2500; Pet. Exh. 175. See also R. 545, 563–564, 588, 716;

The court also found that the respondents "at all times material herein * * * had notice and knowledge of [the injunctions]" (*id.* at 12a, 30a) and adjudged all of them in civil contempt "by reason of their disobedience of and resistance to, and their failure and refusal to comply with," those orders (App. A, *infra,* pp. 2a–3a). It also adjudged Locals 21, 85, and 70, and certain of the individual respondents (Muniz, Richardson, and Local 21 organizer Abrams) "in criminal contempt of this Court by reason of their wilful disobedience of and resistance to, and their wilful failure and refusal to comply with" the two injunction orders (Apps. C, D, *infra,* pp. 24a–25a, 39a–40a). The court emphasized that it failed to find Local 10 and Local 21 vice president DeMartini in criminal contempt solely because the proof of their involvement in the contumacious conduct fell short of demonstrating the wilfulness required of criminal, as opposed to civil, contempt (Tr. 2639).

With respect to the civil contempt, the district court directed all respondents to purge themselves of such contempt by taking certain affirmative action, including compliance with the injunctions and posting of notices. The court also imposed a fine of $7,500 for each day that a respondent union, and $100

Tr. 985, 995–997, 1025, 1126, 1129–1130, 2022, 2250; Pet. Exhs. 180, 181).

Local 21 organizer Abrams, reporting to the membership on the boycott campaign, praised the "support * * * we are receiving from * * * 'ILWU, whose leadership and participation have been absolutely outstanding' and the 'mighty Teamster organization, * * * with accolades to * * * Jim Muniz and Tim Richardson'" (Tr. 2063–2064; Pet. Exh. 225).

for each day that an individual respondent, failed to comply with these orders.

With respect to the criminal contempt, the court, after considering a pre-sentence report submitted by the Regional Director and the arguments of counsel, ordered each of the unions (Locals 21, 85, and 70) to pay a fine of $25,000, subject to the qualification that payment of $15,000 of that amount would be suspended for one year and remitted to the union upon a determination by the court that it had not further violated the injunctions. The court placed the individual respondents (Muniz, Richardson, and Abrams) on probation for one year, with the understanding that if they engaged in any further violations of the injunctions they would be subject to a sentence of imprisonment of not more than six months. (App. E, *infra,* pp. 43a–46a.) The court rejected the unions' contention that they could not be fined more than $500 without a jury trial (App. E, *infra,* pp. 46a–47a).

3. The decision of the court of appeals

The court of appeals affirmed the judgments of civil and criminal contempt (Pet. App. vi). The court found that "the evidence, which was voluminous, * * * clearly justified and supported the [district] court's findings as to both criminal and civil contempts," that "[t]he language of the injunctions was abundantly sufficient," and that respondents and their attorneys were "fully apprised of the charges," but "deliberately chose to risk not to obey them" (Pet. App. vi–vii).

The court also held that the respondents were not entitled to a jury trial in the criminal contempt proceedings (Pet. App. ix–xvi).

ARGUMENT

1. Petitioners' contention (Local 10 Pet. 18–19; Local 70 and Muniz Pet. 10–13) that they did not have "actual notice" of the injunction orders was properly resolved against them by the district court, whose findings the court of appeals affirmed. It has long been settled "that one who knowingly aids, abets, assists, or acts in active concert with, a person who has been enjoined in violating an injunction subjects himself to civil as well as criminal proceedings for contempt even though he was not named or served with process in the suit in which the injunction was issued or even served with a copy of the injunction." *Reich* v. *United States,* 239 F. 2d 134, 137 (C.A. 1), certiorari denied, 352 U.S. 1004. See also *Regal Knitwear Co.* v. *National Labor Relations Board,* 324 U.S. 9, 13–14; *McGraw-Edison Co.* v. *Preformed Line Products Co.,* 362 F. 2d 339, 344 (C.A. 9), certiorari denied, 385 U.S. 919. The law is equally settled that the elements of civil and criminal contempt, including knowledge of the injunction order, may be established by circumstantial evidence. *Walker* v. *City of Birmingham,* 388 U.S. 307, 312, n. 4.

Local 85, with respect to the February 13 injunction, and Local 21 with respect to both injunctions, were parties to the proceeding with full knowledge of the injunction orders. The district court properly found that knowledge of the injunction orders by

560-131—74——2

Local 70 and its president Muniz could be inferred "beyond a reasonable doubt" from the close collaboration between Muniz and agent Richardson of Local 85, which repeatedly manifested itself throughout the secondary boycott campaign (n. 5, *supra*). As the court stated in sentencing the respondents, "it would be ridiculous to hold that Mr. Muniz, who was president of Local 70 and over there on the ground taking an active part in it in connection with people from the other labor unions, didn't know about the order affecting one of his kindred teamster unions" (Tr. 2728; App. E, *infra*, p. 42a). The court's finding was further supported by Local 21's widespread and repeated publicity concerning the injunction orders and the evidence of close cooperation between Local 21 and the other unions (*supra*, pp. 7, 10–11).[6]

Similarly, the district court was warranted in finding that Local 10 had knowledge of the injunctions. It was served with a copy of the temporary restraining order and the order to show cause in that proceeding (*supra*, p. 5).[7] This put Local 10 on notice that Local 21 and all other unions acting with it were enjoined, at least until February 13, 1970, from engag-

[6] Under established principles, evidence of general discussion of a matter, or the likelihood of such discussion, within all or part of a group, supports an inference of knowledge of that matter by a member of that group. 2 Wigmore, *Evidence*, §§ 245, 261, pp. 43, 83–84. (3d ed., 1940) cited with approval in *State* v. *Costa*, 11 N.J. 239, 94 A. 2d 303.

[7] The orders having been served upon the person in charge of Local 10's office, the district court could properly discredit the denial of Local 10's president (*supra*, p. 9) and find that they came to the attention of responsible union officials.

ing in secondary boycott activity in furtherance of the Journal strike, and that it was possible that the injunction would be continued after the hearing on February 13. In these circumstances, Local 10 was under an obligation to inquire whether any "further order of the court" had been entered before engaging in a self-admitted "joint effort to set up formal picket lines outside of Companies that advertise in the Independent Journal" (n. 5, *supra*). Moreover, as with Local 70, Local 10's close cooperation with Local 21 and the latter's widespread and repeated publicity concerning the injunctions makes it reasonable to infer that Local 10 was aware of them.

2. There is no substance to Local 10's contention (Pet. 9–18) that the district court used an erroneous standard of proof in finding it guilty of civil contempt. In its December 24, 1970, adjudication in civil contempt, the court found that the allegations of the petition had been proven "by a preponderance of the evidence" (App. A, *infra*, p. 2a), and in its adjudication in criminal contempt, entered the same day, it found that the allegations of the petition had been proven "beyond a reasonable doubt" as to all respondents except Local 10 and Local 21 vice president DeMartini (App. C, *infra*, p. 24a). The court's subsequent findings as to civil and criminal contempt were identical in all respects except one: the court found that the extent of the involvement of Local 10 and DeMartini fell short of demonstrating the wilfulness which is an element only of criminal, not civil contempt (Tr. 2639; compare App. B, *infra*, pp. 21a–

22a with App. D, *infra,* pp. 39a–40a). All the elements of civil contempt were thus established by the same evidence which proved the criminal contempt; and, since the latter was proved "beyond a reasonable doubt," it follows that the civil contempt was likewise established by that same high standard.

3. There is likewise no merit in the contention of Local 70 and its agent, Muniz (Pet. 13–18), that the injunctions did not prohibit the conduct found to be contumacious—the inducement of suppliers and delivery drivers. The injunction of February 13, 1970, expressly prohibited Locals 21 and 85, and "all members, persons or other labor organizations acting in concert or participation with them," from "threatening, coercing or restraining * * * employers * * * (other than Journal)" and from "engaging in, or * * * inducing * * * any individual employed by * * * any person engaged in commerce * * * to engage in, a strike * * * or refusal * * * to perform any service * * * where * * * an object thereof is: (1) to force * * * any * * * person to cease doing business with Journal" (*supra,* pp. 4–5). The February 13 order thus barred, in furtherance of the Journal strike, any conduct proscribed by Section 8(b)(4)(B) of the Act, including the inducement of work stoppages by the employees of neutral, secondary employers.

To be sure, the immediate secondary boycott conduct which was the subject of the February 1970 injunction proceeding occurred at the Port of San Francisco. But the scope of the order was not limited geographically, nor can any such limitation properly be read into it. The injunction was binding upon respondents "in relation to the prohibited conduct * * * throughout the United States" and contempt of that order "lay in the fact, not in the place, of the disobedience to the requirement." *Leman* v. *Krentler-Arnold Co.,* 284 U.S. 448, 451–452.

The injunction of April 28, 1970 (*supra,* p. 6), expressly prohibited Local 21, and all unions and persons acting with it, from "threatening, coercing or restraining" any firm advertising in the Journal, "by consumer picketing or by any like or related acts or conduct," in order to compel that firm to cease doing business with the Journal. Although the order contains no express reference to inducement or encouragement of employee work stoppages, it is well settled that picketing at the premises of a secondary employer, for the purpose of causing an interference with deliveries or supplies, constitutes an obvious form of coercion and restraint of that employer proscribed by Section 8(b)(4)(B) of the Act. *National Maritime Union of America* v. *National Labor Relations Board,* 346 F. 2d 411, 413–414 (C.A.D.C.); *National Labor Relations Board* v. *District Council of Painters, #48,* 340 F. 2d 107, 111 (C.A. 9). Accordingly, by prohibiting consumer picketing to force a cessation of business with the Journal and any related conduct for that same object, the April 28 injunction also forbade the picketing by Local 70, which took place both at consumer and loading entrances to the stores.

4. Local 70 and Muniz contend (Pet. 18–24) that under 18 U.S.C. 3692 they were entitled to a jury trial of the criminal contempt. The court of appeals re-

jected this argument on the ground that that provision applies only to contempt proceedings arising from injunctions issued in private litigation subject to the Norris-LaGuardia Act (Pet. App. viii–x). This conclusion is in accord with the views of most other courts of appeals,[8] and, as we show below, is correct.

18 U.S.C. 3692 provides in relevant part:

> In all cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed.

With the exception of the words used to describe the type of contempt under consideration, this language is virtually identical to that of Section 11 of

[8] *Madden* v. *Grain Elevator, Flour & Feed Mill Workers*, 334 F. 2d 1014, 1020 (C.A. 7), certiorari denied, 379 U.S. 967; *Brotherhood of Locomotive Firemen* v. *Bangor & Aroostook Railroad Co.*, 380 F. 2d 570, 579–580 (C.A.D.C.), certiorari denied, 389 U.S. 327; *National Labor Relations Board* v. *Red Arrow Freight Lines*, 193 F. 2d 979, 980 (C.A. 5). See also, *United States* v. *Robinson*, 449 F. 2d 925, 931–932 (C.A. 9); *Schauffler* v. *Local 1291, International Longshoremen's Ass'n*, 189 F. Supp. 737 (E.D. Pa.), reversed on other grounds, 292 F. 2d 182 (C.A. 3). In *Philadelphia Marine Trade Ass'n* v. *International Longshoremen's Ass'n, Local 1291*, 368 F. 2d 932, 934 (C.A. 3), reversed on other grounds, 389 U.S. 64, relied upon by petitioners (Pet. No. 73–1924, p. 22), the court was not required to consider the present question, for the case involved a civil contempt proceeding for failure to comply with an order decreeing specific performance of a bargaining agreement—a matter which the court found did not "involve or grow out of a labor dispute."

the Norris-LaGuardia Act (App. G, *infra*, pp. 56a–57a), which was repealed when the revised Title 18 was enacted.[9] The change in language from Section 11, which covered "all cases arising under this Act," to Section 3692's inclusion of "all cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute" did not alter the scope of the statute. For in transferring the provision from the context of labor disputes to the Criminal Code, Congress had to define its scope in terms which would limit its applicability to situations of the sort covered by the Norris-LaGuardia Act.[10] That Section 3692 was merely intended to codify Section 11 in the federal Criminal Code is confirmed by the Reviser's Notes which state that Section 3692 is "based on" Section 11 of the Norris-LaGuardia Act. H. Rep. No. 304, 80th Cong., 1st Sess., A176.

Consequently, Section 3692 is no more applicable to proceedings under the National Labor Relations Act than is the Norris-LaGuardia Act.[11] Section 10(h) of

[9] See Public Law 80–772, Section 21, 62 Stat. 866.

[10] The preamble of the Norris-LaGuardia Act states that "[n]o court of the United States * * * shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute," except in the narrowly defined class of cases thereafter described. Sections 4, 5, 7, 9, and 10 of the Norris-LaGuardia Act, in turn, define their scope in terms of injunctive relief in a "case involving or growing out of any labor dispute." 29 U.S.C. 101, *et seq.*

[11] This conclusion is confirmed by the debates on the jury trial provision of the Civil Rights Act of 1957 (Sec. 151, 71

the National Labor Relations Act expressly provides that, when "granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified or setting aside in whole or in part an order of the Board, * * * the jurisdiction of courts sitting in equity shall not be limited by the [Norris-LaGuardia] Act." As a result of this provision, proceedings under Section 10(*l*) of the National Labor Relations Act are excluded from the Norris-LaGuardia Act. See *Bakery Sales Drivers Union* v. *Wagshal,* 333 U.S. 437, 442; *Building and Construction Trades Council* v. *Alpert,* 302 F. 2d 594, 596–599 (C.A. 1). And, if the injunction suit is beyond the scope of the Norris-LaGuardia Act, a proceeding to obtain compliance with the injunction should be similarly excepted, since the latter proceeding is simply "a continuance of the earlier [Section 10(*l*)] action" and is the final "step in the enforcement" of the Section 10(*l*) order. National *Labor Relations Board* v. *Hopwood Retinning Co.,* 104 F. 2d 302, 305 (C.A. 2).[12]

Recently, however, the Court of Appeals for the

Stat. 638, 42 U.S.C. 1995). At that time, the view was repeatedly expressed that 18 U.S.C. 3692 was not applicable to suits brought by the government because it merely incorporated Section 11 of the Norris-LaGuardia Act. It was also noted that the National Labor Relations Act contained a specific exemption from the provisions of the Norris-LaGuardia Act. See 103 Cong. Rec. 8682–8687 (Congressman Celler); 8688–8691 (Congressman Keating); 12842–12843 (Attorney General Brownell).

[12] Congress was aware that the Norris-LaGuardia Act would be inapplicable to Section 10(*l*) proceedings. An alternative to Section 10(*l*) was proposed in the Senate which would have given private parties, rather than the Board, access to federal district courts to seek orders of the type Section 10(*l*) authorizes. See S. Rept. No. 105, 80th Cong., 1st Sess. 54–56 (Supplemental Views), 93 Cong. Rec. 4834–4847; Leg. Hist. of the Labor Management Relations Act, 1947 (G.P.O. 1948), 460–461, 1347–1370. An argument urged in its favor was that the proposed measure retained "in effect the provisions of sections 11 and 12" and "section 7, exclusive of clauses (c) and (e) of the Norris-LaGuardia Act," whereas "when the regional attorney of the NLRB seeks an injunction the Norris-LaGuardia Act is completely suspended, as are sections 6 and 20 of the Clayton Act." 93 Cong. Rec. 4834–4835, S. Rep. No. 105, 80th Cong., 1st Sess., 55 (Supplemental Views); Leg. Hist. of the Labor Management Relations Act, 1947 (G.P.O. 1948), 1348, 461. Congress rejected the proposal, concluding that adequate protection against abuse of the injunctive remedy was provided by permitting only the Board to seek it.

First Circuit, in *Union Nacional de Trabajadores,* No. 74–1073, Original, decided August 14, 1974 (Supp. Pet. App. i–xviii) held that 18 U.S.C. 3692 requires a jury trial in a criminal contempt proceeding based on the defendants' alleged disobedience of a district court's order pursuant to Section 10(j) of the Act, which permits the Board, after issuance of an unfair labor practice complaint, to obtain a temporary injunction against the conduct alleged in the complaint. Although that case involved an injunction issued under Section 10(j), while the injunction in this case is under Section 10(*l*), both cases turn on the applicability of 18 U.S.C. 3692 to criminal contempts of labor injunctions to which the Norris-LaGuardia Act is not in terms applicable. The decision of the Court of Appeals for the First Circuit on this issue conflicts with that of the Court of Appeals for the Ninth Circuit in the present case. Because the issue is important in labor law, we believe that the Court should resolve the conflict.

5. Local 70 further contends (Pet. 24–27) that the fine imposed on it for criminal contempt—$25,000, with $15,000 suspended for one year and subject to remission if there were no subsequent violations of the injunctions—was so serious a penalty that a jury trial was constitutionally required. In *Cheff* v. *Schnackenberg*, 384 U.S. 373, this Court, exercising its supervisory power over the federal courts, ruled that a federal court may impose a sentence for criminal contempt exceeding six months' imprisonment only after a jury trial or if a jury is waived.[13] However, neither in *Cheff*, nor in subsequent decisions [14] considering the propriety of penalties imposed without a jury trial, has the Court indicated that a jury trial is required where a fine in excess of $500 was imposed. Indeed, the Court has consistently declined to review criminal

[13] The Court indicated that it was guided in part by 18 U.S.C. 1(3), which provides that "[a]ny misdemeanor, the penalty for which does not exceed imprisonment for a period of six months or a fine of not more than $500, or both, is a petty offense."

[14] Thus, in *Bloom* v. *Illinois*, 391 U.S. 194 (state court adjudication in criminal contempt), and *Duncan* v. *Louisiana*, 391 U.S. 145 (state court conviction for a misdemeanor), the Court held that the sentences imposed—two years' imprisonment—involved such an impairment of personal liberty as to warrant classification of the offenses in question as "serious" rather than "petty," and thus to require a jury trial. Cf. *Dyke* v. *Taylor Implement Co.*, 391 U.S. 216 (jury trial not required where six-month jail sentence was imposed for criminal contempt). In *Frank* v. *United States*, 395 U.S. 147, the Court held, by analogy to 18 U.S.C. 3651, which authorizes the federal courts to suspend sentence and place on probation for a period of up to five years persons convicted of petty offenses, that a comparable penalty

contempt proceedings in which fines in excess of $500 were levied without a jury trial.[15]

The Sixth Circuit, however, in *United States* v. *R. L. Polk & Co.*, 438 F. 2d 377, held that a jury trial was required when a fine of $35,000 was imposed in an antitrust criminal contempt case. It ruled that any offense for which a fine of more than $500 was imposed was "serious" rather than "petty", even though the actual impact of the fine might well depend on the fiscal worth of the entity fined. 18 U.S.C. 1(3). The court of appeals in the instant case acknowledged the conflict (Pet. App. xvi, n. 8), but relied on a more flexible standard for determining whether a particular fine imposed for criminal contempt made it a "serious" offense requiring a jury trial. In the circumstances of this case it found the offense not to be serious.

In view of the conflict over the propriety of impos-

for criminal contempt could be imposed without a jury trial. See also *Baldwin* v. *New York*, 399 U.S. 66, 69 ("no offense can be deemed 'petty' for purposes of the right to trial by jury where imprisonment for more than six months is authorized"). And see *Codispoti* v. *Pennsylvania*, No. 73–5615, decided June 26, 1974, and *Taylor* v. *Hayes*, No. 73–473, decided June 26, 1974.

[15] See *In re Local 825, Operating Engineers*, 57 LRRM 2143 (C.A. 3), certiorari denied, 379 U.S. 934 (union fined $15,000 and its business manager $5,000); *In re Holland Furnace Co.*, 341 F. 2d 548 (C.A. 7), certiorari denied, 381 U.S. 924 (company of which Cheff was president fined $100,000); *In re Jersey City Education Ass'n*, 115 N.J. Super. 42, 278 A. 2d 206, 213–215, certiorari denied, 404 U.S. 948 (union fined $10,000); *In re Fair Lawn Education Ass'n*, 63 N.J. 112, 305 A. 2d 72, certiorari denied, 414 U.S. 855 (union with 347 members fined $17,350). See also *Rankin* v. *Shanker*, 23 N.Y. 2d 111, 242 N.E. 2d 802, 807–808, stay denied, 393 U.S. 930 (union subject to fine of $10,000 per day).

ing a fine of that amount for criminal contempt without a jury trial, we do not oppose review of this question.

6. The standard for assessing the validity of contempt fines is that enunciated in *United States* v. *United Mine Workers,* 330 U.S. 258, 303:

> In imposing a fine for criminal contempt, the trial judge may properly take into consideration the extent of the willful and deliberate defiance of the court's order, the seriousness of the consequences of the contumacious behavior, the necessity of effectively terminating the defendant's defiance as required by the public interest, and the importance of deterring such acts in the future. Because of the nature of these standards, great reliance must be placed upon the discretion of the trial judge.[16]

The court of appeals correctly concluded that the fines imposed by the district court were proper. The punitive fines amounted to $10,000 against each union—the balance of $15,000 was suspended and subject to remission if there were no future violations. This amount was not beyond the unions' financial means.[17] Nor was it disproportionate to the seriousness of the contumacious conduct found.[18]

---

[16] In *Mine Workers*, the Court sustained a fine of $700,000 against the union, to be increased to $3,500,000 unless it complied, within five days, with the outstanding injunction. 330 U.S. at 304–305.

[17] Each union has annual gross receipts in excess of $700,000 (Pet. Exh. 121, Presentence Report and Recommendations; Tr. 2676–2677).

[18] The unions were found to have committed at least 26 violations of the outstanding injunction orders (R. 1254–1259).

CONCLUSION

The petition for a writ of certiorari in No. 73–1813 should be denied. The petition for a writ of certiorari in No. 73–1924 should be granted with respect to questions 3 and 4 in that petition.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

PETER G. NASH,
General Counsel,

JOHN S. IRVING,
Deputy General Counsel,

PATRICK HARDIN,
Associate General Counsel,

NORTON J. COME,
Deputy Associate General Counsel,

MARVIN ROTH,
Deputy Assistant General Counsel,
National Labor Relations Board.

OCTOBER 1974.

APPENDIX A

[Caption Omitted]

Civil No. C–70 895 WTS*

Order and Adjudication in Civil Contempt

December 24, 1970

SWEIGERT, J.

Roy O. Hoffman, Regional Director of the Twentieth Region of the National Labor Relation Board, herein called the Board, having duly petitioned this Court for an order adjudging San Francisco Typographical Union No. 21, International Typographical Union, AFL–CIO (herein called Respondent Local 21), its officers and agents, and John DeMartini (herein called Respondent DeMartini), its Vice President, and Don Abrams (herein called Respondent Abrams), it Organizer; Brotherhood of Teamsters & Auto Truck Drivers Local No. 70, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (herein called Respondent Local 70), its officers and agents, and James R. Muniz (herein called Respondent Muniz), its President; Brotherhood of Teamsters & Auto Truck Drivers Local No. 85, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (herein called Respondent Local 85), its officers and agents, and Timothy J. Richardson (herein called Respondent Richardson), its Business Manager and Recording Secretary; and International Longshoremen's and Warehousemen's Union, Local No. 10

(herein called Respondent Local 10), and its officers and agents, in civil contempt of this Court by reason of disobedience of and resistance to, and failure and refusal to comply with, the Temporary Injunction Orders of this Court entered herein in Civil No. C–70 306 LHB on February 13, 1970, and in Civil No. C–70 895 WTS on April 28, 1970; and this Court having, on October 19, 1970, ordered the said Respondents to appear before this Court and show cause why they should not be adjudged in civil contempt of this Court; and the matter having come on for hearing before the Court initially on October 23, 1970, and on various dates thereafter; and Respondents having appeared personally and by counsel, and having been afforded full opportunity to offer evidence and to argue on the law and the facts; and it having been determined that this Court shall make Findings of Fact and Conclusions of Law as set forth below and enter such order as warranted by the evidence before the Court; now, therefore, upon all the pleadings and proceedings heretofore had herein,

The Court finds that the allegations of the Petition filed herein on October 19, 1970, particularly the allegations of Paragraphs III and IV, all of which allegations are hereby incorporated by reference herein, have been proved by a preponderance of the evidence; and the facts of such allegations constitute the findings of fact in this case; and it is hereby,

ORDERED, ADJUDGED AND DECREED that Respondents Local 21, Local 70, Local 85, Local 10 and individual Respondents DeMartini, Abrams, Muniz, and Richardson are, and have been, and they hereby are adjudged to be, in civil contempt of this Court by reason of their disobedience of and resistance to, and their failure and refusal to comply with, the Temporary Injunction Orders of this Court

entered herein on February 13, 1970, and on April 28, 1970; and it is further

ORDERED, ADJUDGED AND DECREED that said Respondents Local 21, Local 70, Local 85, Local 10, DeMartini, Abrams, Muniz and Richardson, and each of them, shall purge themselves of their said civil contempt of this Court, by:

(a) Fully complying with all the provisions of this Court's orders of February 13, 1970, and April 28, 1970;

(b) Notifying Arden-Mayfair, Incorporated (herein called Mayfair), Garden City Transportation Co., Ltd. (herein called Garden City), Lucky Stores, Inc. (herein called Lucky), Long's Drug Stores, Incorporated (herein called Long's), Safeway Stores, Incorporated (herein called Safeway), Foremost Dairy Company (herein called Foremost), United Markets, Inc. (herein called United), Ritz Foods (herein called Ritz), Petrini's Meat, Inc. (herein called Petrini's), Olson Brothers, Incorporated (herein called Olson), Sears, Roebuck & Co. (herein called Sears), Greyhound Bus Lines (herein called Greyhound), Parisian Bakeries, Inc. (herein called Parisian), American Bakeries Co. (herein called American), Nielsen Freight Lines, Inc. (herein called Nielsen), Rath Packing Company (herein called Rath), Kockos Brothers (herein called Kockos), Cala Foods, Inc. (herein called Cala), Baroni French Baking Co. (herein called Baroni), Kilpatrick's Bakeries, Inc. (herein called Kilpatrick's), Lincoln's Market (herein called Lincoln), Tuttle Cheese Co. (herein called Tuttle), Svenhard Bakeries (herein called Svenhard), Rawson Company (herein called Rawson), Armour and Company (herein called Armour), and The Coca-Cola Bottling Co. (herein called Coca-Cola), that they are free to continue or resume advertising in or doing

560–131—74— –3

business with the Journal without fear of economic or other consequences from Respondents, or any of them, and that Respondents will not, by picketing or in any other manner, or by any other means, induce or encourage any individual employed by any of such firms, or any of their suppliers, or of any carrier making deliveries to or pickups from them, or of any person doing business with them to engage in any work stoppage or refusal in the course of his employment to perform work, or in any like or similar manner, threaten, coerce or restrain them, or any of them, or any person doing business with them, in order to force or require any such person to cease placing advertisements in the Journal or to otherwise cease doing business with California Newspapers, Inc., d/b/a San Rafael Independent Journal (herein called Journal).

(c) Posting Notices attached hereto as an appendix at all places where notices and communications to members of Respondents Local 21, Local 70, Local 85 and Local 10, are customarily posted, and maintaining said posted Notices for a period of at least sixty (60) consecutive days, said Notices stating that Respondents have been adjudged in civil contempt of this Court for their disobedience of, and resistance to, and their failure and refusal to comply with, the injunction orders entered by this Court on February 13 and April 28, 1970, and that Respondents will not repeat the conduct found to have violated the Court's orders, or further engage in, sanction, support, induce or encourage any acts or conduct in violation of said injunction orders; and by making available to Mayfair, Garden City, Lucky, Long's, Safeway, Foremost, United, Ritz, Petrini's, Olson, Sears, Greyhound, Parisian, American, Nielsen, Rath, Kockos, Cala, Baroni, Kilpatrick's, Lincoln, Tuttle, Svenhard, Rawson, Armour and Coca-Cola signed copies of said Notices

for posting at their places of business if they so desire;

(d) As to paragraphs (b) and (c) above, Respondents shall have until January 21, 1971 to show cause why they should not comply with the said purgation provisions.

in Civil Contempt;

(e) Appearing in person before this Court on January 21, 1971, at four o'clock in the afternoon, Pacific Standard Time, and showing to this Court that Respondents have complied with paragraph (a) of this Order of Adjudication and Civil Contempt; and it is further

ORDERED, ADJUDGED AND DECREED that in the event of the failure or refusal of Respondents Local 21, Local 70, Local 85 or Local 10 to comply with the foregoing purgation provisions of this decree and to make the showing referred to in paragraph (e) above, attachment for civil contempt shall issue against such delinquent Respondent Local, and such delinquent Respondent Local shall pay to Petitioner a "compliance fine" of $7,500 a day for each day that such Respondent Local fails to comply with the purgation provisions of this decree and/or the Temporary Injunction Orders entered in this Court on February 13 and April 28, 1970; and it is further

ORDERED, ADJUDGED AND DECREED that in the event of the failure or refusal of Respondents DeMartini, Abrams, Muniz and/or Richardson to make the showing referred to in paragraph (e) above, attachment for civil contempt shall issue against such delinquent individual Respondent and that Respondent individual shall pay to Petitioner a "compliance fine" of $100 a day for each day that such Respondent individual fails to comply with the purgation pro-

visions of this decree and/or the Temporary Injunction Orders entered in this Court on February 13 and April 28, 1970; and it is further

ORDERED, ADJUDGED AND DECREED that this Court retains jurisdiction of this matter for purposes of determining and imposing a "compensatory fine" upon Respondents Local 21, Local 70, Local 85 and Local 10 to make reimbursement for costs and expenses, including reasonable counsel fees incurred in the investigation, preparation, presentation and final disposition of this proceeding for adjudication in civil contempt.

DATED AT San Francisco, California, this 24th day of December, 1970.

W. T. SWEIGERT,
United States District Judge.

APPENDIX B

[caption omitted]

Civil No. C-70 895 WTS

Findings of Fact and Conclusions of Law Re: Civil Contempt Proceedings

January 28, 1971

SWEIGERT, J.

Roy O. Hoffman, Regional Director of the Twentieth Region of the National Labor Relations Board, herein called the Board, having duly petitioned this Court for an Order to Show Cause why respondents San Francisco Typographical Union No. 21, International Typographical Union, AFL–CIO (herein called Respondent Local 21), its officers and agents, and John DeMartini (herein called Respondent DeMartini), its Vice President, and Don Abrams (herein called Respondent Abrams), its Organizer; Brotherhood of Teamsters & Auto Truck Drivers Local No. 70, International Brotherhood of Teamsters, Chauffers, Warehousemen & Helpers of America (herein called Respondent Local 70), its officers and agents, and James R. Muniz (herein called Respondent Muniz), its President; Brotherhood of Teamsters & Auto Truck Drivers Local No. 85, International Brotherhood of Teamsters, Chauffers, Warehousemen & Helpers of America (herein called Respondent Local 85), its officers and agents, and Timothy J. Richardson (herein called Respondent Richardson), its Business

Manager and Recording Secretary; and International Longshoremen's and Warehousemen's Union, Local No. 10, (herein called Respondent Local 10), and its officers and agents; herein jointly and severely referred to as respondents, should not be adjudged in civil contempt of orders of this Court entered on February 13, 1970 and April 28, 1970, and for other civil relief, and the petitioner having further requested this Court to institute, *sua sponte,* criminal contempt proceedings against said respondents, and each of them, and an order of this Court having been executed on October 19, 1970 requiring said respondents to appear before this Court on October 23, 1970, and show cause, if any there be, why they, and each of them, should not be adjudged in civil contempt of this Court as prayed, and to answer the petition filed herein, and further requiring said respondents to personally appear before the Court and show cause, if any there be, why they, and each of them, should not be adjudged in, and punished for, criminal contempt; and said respondents having appeared personally and by counsel, and the aforesaid matters having come on to be heard by this Court commencing on October 23, 1970, and during the course of these proceedings, petitioner having amended his petition to delete the name of Henry Montano as a respondent; and full opportunity having been afforded to all parties to offer testimony, evidence, exhibits, and arguments, and the Court having fully considered all the testimony, evidence, exhibits, and arguments offered, and, on December 24, 1970, this Court having issued its Order and Adjudication in Criminal Contempt as to Respondent Local 21, Respondent Local 85, Respondent Local 70, Respondent Abrams, Respondent Richardson and Respondent Muniz, and having on the same date issued its Order and Adjudication in Civil Contempt as to all the respondents, and this

Court, on January 21, 1971, having made Findings of Fact and Conclusions of Law Re: Criminal Contempt Proceedings supplimentary to and *in extenso* of the December 24, 1970 Order and Adjudication in Criminal Contempt, and this Court on January 22, 1971, having afforded all the respondents additional opportunity to offer evidence, testimony, exhibits, and argument on the civil contempt proceedings, and Respondent Local 10 having requested an opportunity to present additional evidence, and this Court having set aside the December 24, 1970 Order and Adjudication in Civil Contempt as to Respondent Local 10 for such purpose, and this Court having received and considered the additional evidence offered by Respondent Local 10 and upon consideration of such additional evidence and the entire record in this case, this Court hereby reaffirms its Order and Adjudication in Civil Contempt dated December 24, 1970 as to all the respondents and, supplementary to and *in extenso* of such order, hereby makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

I. On February 13, 1970, this Court made and entered an order enjoining and restraining Respondent Local 21 and Respondent Local 85, their officers, representatives, agents, servants, employees, attorneys, and all members, persons and other labor organizations acting in concert or participation with them, or any of them, from:

(a) Continuing to picket at or in the vicinity of Pier 46A at the Port of San Francisco; or picketing cargo or shipments of newsprint or other supplies awaiting delivery to California Newspapers, Inc., d/b/a San Rafael Independent Journal (herein called Journal), or picketing the piers or terminals where such cargo or shipments are located, or picketing the

carriers of such cargo or shipments; or signaling or appealing to truckdrivers or other employees not to pick up, handle or work on such cargo or shipments at such piers or terminals, or otherwise to refuse to perform services for their respective employers at such piers or terminals; or

(b) ENGAGING IN, or by picketing, orders, directions, solicitation, requests or appeals, howsoever given, made or imparted, or by any like or related acts of conduct, or by permitting any such to remain in existence or effect, or by employee discrimination, reprisals, disciplinary proceedings or threats thereof, INDUCING OR ENCOURAGING any individual employed by Star Terminal Co., Inc., Garden City Transportation Co., Ltd., Globe-Wally's Fork Lift Service, Inc. (herein called Star, Garden City and Globe), or by any motor carrier, lift truck service company or other person engaged in commerce or in an industry affecting commerce TO ENGAGE IN, a strike, slow down or refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities, or to perform any service; or sanctioning, supporting, or promoting any such strike or refusal; or

In any such or similar manner or by any other means, including refusal to dispatch employees pursuant to contractual obligation or custom, THREATENING, COERCING OR RESTRAINING said employers, or any other person engaged in commerce or in an industry affecting commerce,

Where in either case AN OBJECT THEREOF is: (1) to force or require Powell River-Alberni Sales Limited (herein called Powell), or any other person, to cease doing business with Journal; or (2) to force or require Star, Garden City, or any other person, to cease doing business with Powell, or to force or require Globe, or any other person, to cease doing business with Garden City, in order to compell Powell to cease doing business with Journal.

II. On April 28, 1970, this Court made and entered an order enjoining and restraining Respondent Local 21, its officers, representatives, agents, servants, employees, attorneys and all members, persons and labor organizations acting in concert or participation with it, from:

(a) Continuing or resuming its picketing of the following named employers at or in the vicinity of the stores listed below where an object of the picketing is to cause customers of these stores to cease buying products not advertised in The Independent Journal newspaper:

The Emporium
835 Market Street
San Francisco, California

The Emporium
1000 Northgate Fashion Mall
San Rafael, California

Mayfair Market
7th and H Streets
San Rafael, California

Lucky
720 Center Street
Fairfax, California

Big G Super
100 Harbor Drive
Sausalito, California

Big G Super
5651 Paradise Drive
Corte Madera, California

Longs Drugs
880 Sir Francis Drake Boulevard
San Anselmo, California

Longs Drugs
442 Las Gallinas Avenue
San Rafael, California

(b) Picketing at or in the vicinity of the premises of other firms which advertise in The Independent Journal newspaper where an object of the picketing is to cause customers of such firms to cease buying products not advertised in that paper;

(c) Appealing to the public, consumers and customers by means of handbills, oral statements, or otherwise, in conjunction with picketing, not to patronize the stores described in subparagraph (a) above, or any store owned by the firms named therein, or any other store advertising in The Independent Journal newspaper; or

(d) Threatening, coercing, or restraining The Emporium-Capwell Corporation, Arden-Mayfair Incorporated, Lucky Stores, Inc., Big G Super Markets, Inc., Longs Drug Stores Incorporated or any other firm advertising in The Independent Journal newspaper, by consumer picketing or by any like or related acts or conduct, where an object thereof is to force or require the said advertisers to cease advertising in The Independent Journal newspaper or to cease doing business with California Newspapers, Inc., d/b/a The Independent Journal.

III. The aforesaid injunction orders have been in full force and effect since their entry and respondents, and each of them, at all times material herein, have had notice and knowledge of their terms.

IV. (a) At all times material herein, Respondents DeMartini and Abrams have been Vice President and Organizer, respectively, of Respondent Local 21, and its agents within the meaning of the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151, *et seq.* (herein called the Act).

(b) At all times material herein, Respondent Local 70 has been a labor organization within the meaning of the Act.

(c) At all times material herein, Respondent Muniz has been President of Respondent Local 70 and its agent within the meaning of the Act.

(d) At all times material herein, Respondent Richardson has been the Business Manager and Recording Secretary of Respondent Local 85 and its agent within the meaning of the Act.

V. On or about, or prior to, October 7, 1970, respondents embarked upon a joint plan, program and campaign to create a boycott of goods, materials, commodities and services destined to, consigned to, or utilized by firms, advertising in the Journal or to firms doing business with the Journal. In furtherance and support of their aforesaid joint plan, program and campaign:

1. On or about October 8, 1970, Respondent Abrams met with a group of approximately 15 men outside the Painters Union Hall on Mission and Tamalpais Streets in the City of San Rafael, California (hereafter referred to as San Rafael) during which meeting bumper stickers stating "Scabs Must Go" were distributed to members of the group. Thereafter, these men were dispatched by respondents to various street corners in San Rafael, where they engaged in stopping trucks of various carriers delivering merchandise and commodities to food markets and other firms in San Rafael advertising in the Journal, and, by oral appeals, by picketing, by obstructing traffic, and by other means, induce and encourage individuals employed by various carriers and food markets to refuse to make deliveries to firms advertising in the Journal, including Mayfair Market (herein called Mayfair). Among the individuals engaging in some of the aforesaid conduct was Respondent Richardson.

2. Also on or about October 8, 1970, respondents, including Respondent Richardson, picketed the delivery

area of Safeway, Inc. (herein called Safeway), located at 700 B Street in San Rafael, and induced and encouraged a driver of Safeway not to make a delivery.

3. Also on or about October 8, 1970, respondents by their agents, including Respondent Richardson and Respondent Muniz, harassed the driver of a truck of Garden City Transportation Co. Ltd. (herein called Garden City) on its return trip to Garden City's premises after making delivery of newsprint to the Journal, and picketed the premises of Garden City and its truck with signs, the legend on some of which read: "Teamsters on Strike—Scabs Must Go." As a consequence of such picketing, drivers of Garden City engaged in work stoppages and refusals to perform services for their employer. In addition, respondents threatened Garden City with the shutdown of its operations on October 9, 1970.

4. Also on or about October 9, 1970, respondents, including Respondent Richardson, picketed a store of Lucky Stores, Inc. (herein called Lucky) at 400 Las Gallinas Avenue, San Rafael, as a consequence of which drivers employed by various carriers were prevented from making deliveries to the said store. By such conduct, and by other means, respondents induced, encouraged and appealed to drivers employed by carriers and suppliers not to make deliveries.

5. Also on or about October 9, 1970, respondents picketed a Lucky store at 720 Center Street, Fairfax, California, as a consequence of which drivers employed by various carriers and suppliers refused to make deliveries to such store. By such conduct, and by other means, respondents induced and encouraged drivers of various carriers and suppliers not to make deliveries to such store.

6. Also on or about October 9, 1970, respondents picketed the premises of Foremost Dairy Company (herein called Foremost) in San Rafael and a store of Mayfair at 340 Third Street, San Rafael, and induced and encouraged drivers not to make pickups or deliveries.

7. Also on or about October 9, 1970, respondents picketed the entrance to the Red Hill Shopping Center, Sir Francis Drake Boulevard, San Anselmo, California, with signs some of which read: "Teamsters Support Independent Journal" and "Teamsters on Strike." Respondents, by such picketing and by other means, caused trucks delivering goods to the Safeway store located at 900 Sir Francis Drake Boulevard, San Anselmo, California, to turn away. Respondents also stopped trucks on Sir Francis Drake Boulevard, and induced and encouraged delivery drivers not to make deliveries to various Marin County retail stores.

8. On or about October 12, 1970, respondents, by their pickets and agents, by picketing and by other means, induced and encouraged drivers of Lucky not to perform services at the Lucky store located at 720 Center Street, Fairfax, California, and as a consequence prevented regular drivers from performing their duties for Lucky.

9. On or about October 12, 1970, respondents, by their agents, induced and encouraged delivery drivers not to perform services at a Lucky store located at 400 Las Gallinas Avenue, San Rafael, California.

10. On or about October 12, 1970, respondents, by their agents and pickets, by picketing and by other means, induced and encouraged delivery drivers employed by Safeway not to perform services at the Safeway store located at 700 B Street, San Rafael, California.

11. Also on or about October 12, 1970, and continuing through October 16, 1970, respondents, by their agents and pickets, by means of picketing and other activities, induced and encouraged Safeway drivers not to perform services at its 700 B Street, San Rafael store. As a result, deliveries were not made.

12. Also on or about October 12, 1970, respondents, by their agents and pickets, by means of picketing and by other means, induced and encouraged drivers not to make deliveries at United Market located at 515 Third Street, San Rafael, California. As a result, deliveries to that store were not made.

13. Also on or about October 12, 1970, respondents, by their agents and pickets, by means of picketing and other activities, induced and encouraged drivers of Mayfair not to perform services for their employer.

14. On or about October 13, 1970, respondents picketed three corners of the Highway 101 off-ramp to San Rafael, California, at Mission and Heatherton Streets, carrying signs the legend on some of which read: "Unfair to Teamsters—Scabs Must Go." By such picketing, and other conduct, respondents obstructed traffic entering San Rafael while inducing and encouraging truck drivers not to perform services for, make deliveries to, or pickups from retail stores located in San Rafael.

15. Also on or about October 13, 1970, respondents, by their agents and pickets, by means of picketing and other activities, induced and encouraged drivers of Safeway not to perform services at Safeway's 900 Sir Francis Drake Boulevard, San Anselmo, California store. As a result of such activities, deliveries were not made.

16. On or about October 14, 1970, respondents, by their agents and pickets, picketed the Highway 101 off-ramp at Second and Irwin Streets, San Rafael,

California. That same day respondents, by their agents and pickets, picketed two corners of the Highway 101 off-ramp to San Rafael at Mission and Heatherton Streets.

17. On or about October 14, 1970, respondents, by their agents and pickets, picketed the Safeway store located at 700 B Street, San Rafael, California.

18. Also on or about October 14, 1970, respondents, by their agents and pickets, picketed the delivery areas to the United Super Market located at 100 Red Hill Avenue, San Anselmo, California, and such pickets and agents induced and encouraged drivers not to make deliveries at that store. As a result of respondents' activities, deliveries were not made.

19. Also on or about October 14, 1970, respondents, by their agents and pickets, picketed the street corners adjacent to and the delivery area of the United Market located at 515 Third Street, San Rafael, California. Respondents' said agents and pickets, by threats and picketing, induced and encouraged drivers not to make deliveries to that store. As a result of such activities, deliveries were not made.

20. Also on or about October 14, 1970, respondents, by their agents, induced and encouraged an employee of Ritz Foods not to perform services for his employer in San Rafael, San Anselmo and Fairfax, California.

21. Also on or about October 14, 1970, respondents, by their agents and pickets, by threats and picketing, induced and encouraged drivers of various employers engaged in commerce or in industries affecting commerce not to handle goods destined for Petrini's Meat, Inc. As a result of such activities, deliveries from various employers were not made. As a further consequence of such activities, Petrini's store received no deliveries of any kind after respondents' picketing began there on October 14, 1970.

22. On or about October 15, 1970, respondents, by their agents and pickets, picketed a Safeway truck near or adjacent to the Safeway store at 700 B Street, San Rafael, California. As a consequence of such picketing and other conduct, the Safeway driver refused to perform services for Safeway.

23. On or about October 16, 1970, respondents, by their pickets and agents, picketed the driveway and loading dock entrances to the Lucky store at 720 Center Street, Fairfax, California. The pickets carried signs some of which read: "This Seafarer Supports I. J. Strikers" and "Seamons Support I. J. Strikers."

24. Also on or about October 16, 1970, respondents, by their agents and pickets, picketed the customer entrances, delivery entrance and parking lot of the Safeway store located at 900 Sir Francis Drake Boulevard, San Anselmo, California. Some of the pickets carried signs with legends stating "Seamans Support I. J. Strike." Others carried signs stating "This Longshoreman Supports I. J. Strike."

25. Also on or about October 16, 1970, respondents, by their pickets and agents, picketed with from 12 to 15 pickets in the area of the Red Hill Shopping Center in San Anselmo, California, in the vicinity of a store of Safeway, of Longs Drugs (herein called Longs), and Sears, Roebuck & Co. (herein called Sears). Such picketing was engaged in with signs which identified the pickets as "Longshoremen" and "Seaman." Among such pickets was a person wearing a button identifying him as a steward for Respondent Local 10.

26. On various occasions since about October 8, 1970, respondents, and each of them, acting jointly and in concert and participation with each other, and in furtherance and support of Respondent Local 21's dispute with the Journal, have, by picketing, oral appeals, instructions, directions and orders, and by other means, induced or encouraged individuals employed by persons engaged in commerce or in an industry affecting commerce to engage in work stoppages and refusals to perform services for their employers and have threatened, coerced and restrained such persons.

VI. The acts and conduct of respondents set forth in paragraph V and its subparagraphs 1 through 26 above have been engaged in by respondents acting as joint venturers and in concert and participation with each other.

VII. The acts ad conduct of respondents set forth in paragraph V and its subparagraphs 1 through 26 above, and in paragraph VI above, have been engaged in by respondent labor organizations and the individual respondents named herein acting as joint venturers and in concert and participation with each other.

VIII. By the acts and conduct described in paragraph V and its subparagraphs 1 through 26 above, and by other means, respondents have engaged in, and have induced and encouraged individuals employed by Arden-Mayfair, Incorporated (herein called Mayfair), Garden City Transportation Co., Ltd. (herein called Garden City), Lucky Stores, Inc. (herein called Lucky), Long's Drug Stores Incorporated (herein called Long's), Safeway Stores, Incorporated (herein called Safeway), Foremost Dairy Company (herein called Foremost), United Markets, Inc. (herein called United), Ritz Foods (herein called Ritz), Petrini's Meat, Inc. (herein called Petrini's), Olson Brothers, Incorporated (herein called Olson), Sears, Roebuck & Co. (herein called Sears), Greyhound Bus Lines (herein called Greyhound), Parisian Bakeries, Inc. (herein called Parisian), American Bakeries Co. (herein called American), Nielsen Freight Lines, Inc.

560-131—74——4

(herein called Nielsen), Rath Packing Company (herein called Rath), Kockos Brothers (herein called Kockos), Cala Foods, Inc. (herein called Cala), Baroni French Baking Co. (herein called Baroni), Kilpatrick's Bakeries, Inc. (herein called Kilpatrick's), Lincoln's Market (herein called Lincoln), Tuttle Cheese Co. (herein called Tuttle), Svenhard Bakeries (herein called Svenhard), Rawson Company (herein called Rawson), Armour and Company (herein called Armour), and The Coca-Cola Bottling Co. (herein called Coca-Cola), by their suppliers, by carriers making deliveries to or pickups from such persons, and by other persons engaged in commerce or in an industry affecting commerce, to engage in strikes or refusals in the course of their employment to use, manufacture, process, transport or otherwise handle or work on goods, articles, materials or commodities, or to perform services, and have threatened, coerced or restrained such persons with an object or objects of:

(1) Forcing or requiring Mayfair, Garden City, Lucky, Long's, Safeway, Foremost, United, Ritz, Petrini's, Olson, Sears, Greyhound, Parisian, American, Nielsen, Rath, Kockos, Cala, Baroni, Kilpatrick's, Lincoln, Tuttle, Svenhard, Rawson, Armour, Coca-Cola, and other persons to cease placing advertisements in or to otherwise cease doing business with each other or with The Journal.

(2) Forcing or requiring the customers and suppliers of such persons to cease doing business with such persons in order to compel such persons to cease placing advertisements in or otherwise cease doing business with The Journal.

IX. By their acts and conduct hereinabove set forth, respondents, and each of them, have failed and refused to comply with, and have violated and disobeyed,

the injunction Orders of this Court entered herein on February 13 and April 28, 1970.

CONCLUSIONS OF LAW

1. Respondents John DeMartini, Vice President, and Don Abrams, Organizer, were, and at all times material herein have been, representatives and agents of Respondent Local 21 within the meaning of the National Labor Relations Act, as amended (herein called the Act) and the Orders of this Court entered herein on February 13 and April 28, 1970.

2. Respondent Timothy J. Richardson, Business Manager and Recording Secretary, was, and at all times material herein has been, a representative and agent of Respondent Local 85 within the meaning of the Act, and the Orders of this Court entered herein on February 13 and April 28, 1970.

3. Respondent Local 70 is, and at all times material herein has been, a labor organization within the meaning of the Act and the Orders of this Court entered herein on February 13 and April 28, 1970.

4. Respondent James R. Muniz, President of Respondent Local 70, is, and at all times material herein has been, a representative and agent of Respondent Local 70 within the meaning of the Act.

5. Respondents have engaged in acts and conduct as set forth in the above Findings of Fact which affect the operations of Mayfair, Garden City, Lucky, Long's, Safeway, Foremost, United, Ritz, Petrini's, Olson, Sears, Greyhound, Parisian, American, Nielsen, Rath, Kockos, Cala, Baroni, Kilpatrick's Lincoln, Tuttle, Svenhard, Rawson, Armour, Coca-Cola and other persons engaged in commerce within the meaning of Section 2, subsection (6) and (7) of the Act.

6. By their acts and conduct set forth in the above Findings of Fact, respondents, and each of them, have violated and disobeyed the Orders of this Court entered on February 13 and April 28, 1970, which acts and conduct constitute civil contempt of said Orders and of this Court.

DATED AT San Francisco, California, this 28th day of January, 1971.

W. T. SWEIGERT,
United States District Judge.

APPENDIX C

[caption omitted]

Civil No. C–70 895 WTS

Order and Adjudication in Criminal Contempt

December 24, 1970

SWEIGERT, J.

Roy O. Hoffman, Regional Director of the Twentieth Region of the National Labor Relations Board, herein called the Board, having duly petitioned this Court for an order adjudging San Francisco Typographical Union No. 21, International Typographical Union, AFL–CIO (herein called Respondent Local 21), its officers and agents, and John DeMartini (herein called Respondent DeMartini), its Vice President, and Don Abrams (herein called Respondent Abrams), its Organizer; Brotherhood of Teamsters & Auto Truck Drivers Local No. 70, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (herein called Repsondent Local 70), its officers and agents, and James R. Muinz (herein called Respondent Muniz), its President; Brotherhood of Teamsters & Auto Truck Drivers Local No. 85, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (herein called Respondent Local 85), its officers and agents, and Timothy J. Richardson (herein called Respondent Richardson), its Business Manager and Recording Secretary, and International Longshoremen's and Warehousemen's Union Local No. 10, (herein called

Respondent Local 10), and its officers, and agents, in criminal contempt of this Court by reason of disobedience of and resistance to, and failure and refusal to comply with, the Temporary Injunction Orders of this Court entered herein in Civil No. C–70 306 LHB on February 13, 1970, and in Civil No. C–70 895 WTS on April 28, 1970; and this Court having, on October 19, 1970, ordered the said Respondents to appear before this Court and show cause why they should not be adjudged in criminal contempt of this Court; and the matter having come on for hearing before the Court initially on October 23, 1970, and on various dates thereafter; and Respondents having appeared personally and by counsel, and having been afforded full opportunity to offer evidence and to argue on the law and the facts; and it having been determined that this Court shall make Findings of Fact and Conclusions of Law as set forth below and enter such order as warranted by the evidence before the Court; now, therefore, upon all the pleadings and proceedings heretofore had herein, it is hereby found, concluded and adjudged as follows:

The Court finds that the allegations of the Petition filed herein on October 19, 1970, particularly the allegations of Paragraphs III and IV, all of which allegations are hereby incorporated by reference herein, have been proved beyond a reasonable doubt as to the respondents named below; and the facts of such allegations constitute the findings of fact in this case as to the respondents named below; and it is hereby,

ORDERED, ADJUDGED AND DECREED that Respondents Local 21, Local 70, Local 85, and individual Respondents Abrams, Muniz and Richardson are, and have been, and they hereby are adjudged to be, in criminal contempt of this Court by reason of

their wilful disobedience of and resistance to, and their wilful failure and refusal to comply with, the Temporary Injunction Orders of this Court entered herein on February 13, 1970, and on April 28, 1970; and it is further

ORDERED, ADJUDGED AND DECREED that said Respondents Local 21, Local 70, Local 85, Abrams, Muniz and Richardson, and each of them, shall appear in person before this Court on January 21, 1971, at four o'clock in the afternoon, Pacific Standard Time, at which time this Court shall render such judgment and impose such penalties as it deems just, proper and appropriate in the premises.

DATED AT San Francisco, California, this 24th day of December, 1970.

W. T. SWEIGERT,
United States District Judge.

APPENDIX D

[caption omitted]

Civil No. C–70 895 WTS

Findings of Fact and Conclusions of Law Re:
Criminal Contempt Proceedings

January 21, 1971

SWEIGERT, J.

Roy O. Hoffman, Regional Director of the Twentieth Region of the National Labor Relations Board, herein called the Board, having duly petitioned this Court for an Order to Show Cause why respondents San Francisco Typographical Union No. 21, International Typographical Union, AFL–CIO, (herein called Respondent Local 21), its officers and agents, and John DeMartini (herein called Respondent DeMartini), its Vice President, and Don Abrams (herein called Respondent Abrams), its Organizer; Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (herein called Respondent Local 70), its officers and agents, and James R. Muniz (herein called Respondent Muniz), its President; Brotherhood of Teamsters & Auto Truck Drivers Local No. 85, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (herein called Respondent Local 85), its officers and agents, and Timothy J. Richardson (herein called Respondent Richardson), its Business Manager and Recording Secretary; and

International Longshoremen's and Warehousemen's Union, Local No. 10 (herein called Respondent Local 10), and its officers and agents; herein jointly and severally referred to as respondents, should not be adjudged in civil contempt of orders of this Court entered on February 13, 1970 and April 28, 1970, and for other civil relief, and the petitioner having further requested this Court to institute, *sua sponte,* criminal contempt proceedings against said respondents, and each of them, and an order of this Court having been executed on October 19, 1970, requiring said respondents to appear before this Court on October 23, 1970, and show cause, if any there be, why they, and each of them, should not be ajudged in civil contempt of this Court as prayed, and to answer the petition filed herein, and further requiring said respondents to personally appear before the Court and show cause, if any there be, why they, and each of them, should not be adjudged in, and punished for, criminal contempt; and said respondents having appeared personally and by counsel, and the aforesaid matters having come on to be heard by this Court commencing on October 23, 1970, and full opportunity having been afforded to all parties to offer testimony, evidence, exhibits, and arguments, and the Court having fully considered all the testimony, evidence, exhibits, and arguments offered, hereby makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. On February 13, 1970, this Court made and entered an order enjoining and restraining Respondent Local 21 and Respondent Local 85, their officers, agents, servants, employees, attorneys, and all members, persons and other labor organizations acting in concert or participation with them, or any of them, from:

560-131—74——5

(a) Continuing to picket at or in the vicinity of Pier 46A at the Port of San Francisco; or picketing cargo or shipments of newsprint or other supplies awaiting delivery to California Newspapers, Inc., d/b/a San Rafael Independent Journal (herein called Journal), or picketing the piers or terminals where such cargo or shipments are located, or picketing the carriers of such cargo or shipments; or signaling or appealing to truckdrivers or other employees not to pick up, handle or work on such cargo or shipments at such piers or terminals, or otherwise to refuse to perform services for their respective employers at such piers or terminals; or

(b) ENGAGING IN, or by picketing, orders, directions, solicitation, requests or appeals, howsoever given, made or imparted, or by any like or related acts or conduct, or by permitting any such to remain in existence or effect, or by employee discrimination, reprisals, disciplinary proceedings or threats thereof, INDUCING OR ENCOURAGING any individual employed by Star Terminal Co., Inc., Garden City Transportation Co., Ltd., Globe-Wally's Fork Lift Service, Inc. (herein called Star, Garden City and Globe), or by any motor carrier, lift truck service company or other person engaged in commerce or in an industry affecting commerce TO ENGAGE IN, a strike, slow-down or refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities, or to perform any service; or sanctioning, supporting or promoting any such strike or refusal; or

In any such or similar manner or by any other means, including refusal to dispatch employees pursuant to contractual obligation or custom, THREATENING, COERCING OR RESTRAINING said em-

ployers, or any other person engaged in commerce or in an industry affecting commerce,

Where in either case AN OBJECT THEREOF is: (1) to force or require Powell River-Alberni Sales Limited (herein called Powell), or any other person, to cease doing business with Journal; or (2) to force or require Star, Garden City, or any other person, to cease doing business with Powell, or to force or require Globe, or any other person, to cease doing business with Garden City, in order to compel Powell to cease doing business with Journal.

II. On April 28, 1970, this Court made and entered an order enjoining and restraining Respondent Local 21, its officers, representatives, agents, servants, employees, attorneys, and all members, persons and labor organizations acting in concert and participation with it, from:

(a) Continuing or resuming its picketing of the following named employers at or in the vicinity of the stores listed below where an object of the picketing is to cause customers of these stores to cease buying products not advertised in The Independent Journal newspaper:

The Emporium
835 Market Street
San Francisco, California

The Emporium
1000 Northgate Fashion Mall
San Rafael, California

Mayfair Market
7th and H Streets
San Rafael, California

Lucky
720 Center Street
Fairfax, California

Big G Super
100 Harbor Drive
Sausalito, California

Big G Super
5651 Paradise Drive
Corte Madera, California
Longs Drugs
880 Sir Francis Drake Boulevard
San Anselmo, California
Longs Drugs
442 Las Callinas Avenue
San Rafael, California

(b) Picketing at or in the vicinity of the premises of other firms which advertise in The Independent Journal newspaper where an object of the picketing is to cause customers of such firms to cease buying products not advertised in that paper;

(c) Appealing to the public, consumers and customers by means of handbills, oral statements, or otherwise, in conjunction with picketing, not to patronize the stores described in subparagraph (a) above, or any store owned by the firms named therein, or any other store advertising in The Independent Journal newspaper; or

(d) Threatening, coercing, or restraining The Emporium-Capwell Corporation, Arden-Mayfair Incorporated, Lucky Stores, Inc., Big G Super Markets, Inc., Longs Drug Stores Incorporated or any other firm advertising in The Independent Journal newspaper, by consumer picketing or by any like or related acts or conduct, where an object thereof is to force or require the said advertisers to cease advertising in The Independent Journal newspaper or to cease doing business with California Newspapers, Inc., d/b/a The Independent Journal.

III. The aforesaid injunction orders have been in full force and effect since their entry and respondents, and each of them, at all times material herein have had notice and knowledge of their terms.

IV. (a) At all times material herein, Respondent DeMartini and Abrams have been Vice President and Organizer, respectively, of Respondent Local 21, and its agents within the meaning of the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151, *et seq.* (herein called the Act).

(b) At all times material herein, Respondent Local 70 has been a labor organization within the meaning of the Act.

(c) At all times material herein, Respondent Muniz has been President of Respondent Local 70 and its agent within the meaning of the Act.

(d) At all times material herein, Respondent Richardson has been the Business Manager and Recording Secretary of Respondent Local 85 and its agent within the meaning of the Act.

V. On or about, or prior to, October 7, 1970, respondents embarked upon a joint plan, program and campaign to create a boycott of goods, materials, commodities and services destined to, consigned to, or utilized by firms advertising in the Journal or to firms doing business with the Journal. In furtherance and support of their aforesaid joint plan, program and campaign:

1. On or about October 8, 1970, Respondent Abrams met with a group of approximately 15 men outside the Painters Union Hall on Mission and Tamalpais Streets in the City of San Rafael, California (hereafter referred to as San Rafael), during which meeting bumper stickers stating "Scabs Must Go" were distributed to members of the group. Thereafter, these men were dispatched by respondents to various street corners in San Rafael, where they engaged in stopping trucks of various carriers delivering merchandise and commodities to food markets and other firms in San Rafael advertising in the Journal, and, by oral

appeals, by picketing, by obstructing traffic, and by other means, induced and encouraged individuals employed by various carriers and food markets to refuse to make deliveries to firms advertising in the Journal, including Mayfair Market (herein called Mayfair). Among the individuals engaging in some of the aforesaid conduct was Respondent Richardson.

2. Also on or about October 8, 1970, respondents, including Respondent Richardson, picketed the delivery area of Safeway, Inc. (herein called Safeway), located at 700 B Street in San Rafael, and induced and encouraged a driver of Safeway not to make a delivery.

3. Also on or about October 8, 1970, respondents, by their agents, including Respondent Richardson and Respondent Muniz, harassed the driver of a truck of Garden City Transportation Co. Ltd. (herein called Garden City) on its return trip to Garden City's premises after making delivery of newsprint to the Journal, and picketed the premises of Garden City and its truck with signs, the legend on some of which read: "Teamsters on Strike—Scabs Must Go." As a consequence of such picketing, drivers of Garden City engaged in work stoppages and refusals to perform services for their employer. In addition, respondents threatened Garden City with the shutdown of its operations on October 9, 1970.

4. Also on or about October 9, 1970, respondents, including Respondent Richardson, picketed a store of Lucky Stores, Inc. (herein called Lucky) at 400 Las Gallinas Avenue, San Rafael, as a consequence of which drivers employed by various carriers were prevented from making deliveries to the said store. By such conduct, and by other means, respondents induced, encouraged and appealed to drivers employed by carriers and suppliers not to make deliveries.

5. Also on or about October 9, 1970, respondents picketed a Lucky store at 720 Center Street, Fairfax, California, as a consequence of which drivers employed by various carriers and suppliers refused to make deliveries to such store. By such conduct, and by other means, respondents induced and encouraged drivers of various carriers and suppliers not to make deliveries to such store.

6. Also on or about October 9, 1970, respondents picketed the premises of Foremost Dairy Company (herein called Foremost) in San Rafael and a store of Mayfair at 340 Third Street, San Rafael, and induced and encouraged drivers not to make pickups or deliveries.

7. Also on or about October 9, 1970, respondents picketed the entrance to the Red Hill Shopping Center, Sir Francis Drake Boulevard, San Anselmo, California, with signs some of which read: "Teamsters Support Independent Journal" and "Teamsters On Strike." Respondents, by such picketing and by other means, caused trucks delivering goods to the Safeway store located at 900 Sir Francis Drake Boulevard, San Anselmo, California, to turn away. Respondents also stopped trucks on Sir Francis Drake Boulevard, and induced and encouraged delivery drivers not to make deliveries to various Marin County retail stores.

8. On or about October 12, 1970, respondents, by their pickets and agents, by picketing and by other means, induced and encouraged drivers of Lucky not to perform services at the Lucky store located at 720 Center Street, Fairfax, California, and as a consequence prevented regular drivers from performing their duties for Lucky.

9. On or about October 12, 1970, respondents, by their agents, induced and encouraged delivery drivers not to perform services at a Lucky store located at 400 Las Gallinas Avenue, San Rafael, California.

10. On or about October 12, 1970, respondents, by their agents and pickets, by picketing and by other means, induced and encouraged delivery drivers employed by Safeway not to perform services at the Safeway store located at 700 B Street, San Rafael, California.

11. Also on or about October 12, 1970, and continuing through October 16, 1970, respondents, by their agents and pickets, by means of picketing and other activities, induced and encouraged Safeway drivers not to perform services at its 700 B Street, San Rafael store. As a result, deliveries were not made.

12. Also on or about October 12, 1970, respondents, by their agents and pickets, by means of picketing and by other means, induced and encouraged drivers not to make deliveries at United Market located at 515 Third Street, San Rafael, California. As a result, deliveries to that store were not made.

13. Also on or about October 12, 1970, respondents, by their agents and pickets, by means of picketing and other activities, induced and encouraged drivers of Mayfair not to perform services for their employer.

14. On or about October 13, 1970, respondents picketed three corners of the Highway 101 off-ramp to San Rafael, California, at Mission and Heatherton Streets, carrying signs the legend on some of which read: "Unfair To Teamsters—Scabs Must Go." By such picketing, and other conduct, respondents obstructed traffic entering San Rafael while inducing and encouraging truck drivers not to perform services for, make deliveries to, or pickups from retail stores located in San Rafael.

15. Also on or about October 13, 1970, respondents, by their agents and pickets, by means of picketing and other activities, induced and encouraged drivers of Safeway not to perform services at Safeway's

900 Sir Francis Drake Boulevard, San Anselmo, California store. As a result of such activities, deliveries were not made.

16. On or about October 14, 1970, respondents, by their agents and pickets, picketed the Highway 101 off-ramp at Second and Irwin Streets, San Rafael, California. That same day Respondents, by their agents and pickets, picketed two corners of the Highway 101 off-ramp to San Rafael at Mission and Heatherton Streets.

17. On or about October 14, 1970, respondents, by their agents and pickets, picketed the Safeway store located at 700 B Street, San Rafael, California.

18. Also on or about October 14, 1970, respondents, by their agents and pickets, picketed the delivery areas to the United Super Market located at 100 Red Hill Avenue, San Anselmo, California, and such pickets and agents induced and encouraged drivers not to make deliveries at that store. As a result of respondents' activities, deliveries were not made.

19. Also on or about October 14, 1970, Respondents, by their agents and pickets, picketed the street corners adjacent to and the delivery area of the United Market located at 515 Third Street, San Rafael, California. Respondents' said agents and pickets, by threats and picketing, induced and encouraged drivers not to make deliveries to that store. As a result of such activities, deliveries were not made.

20. Also on or about October 14, 1970, respondents, by their agents, induced and encouraged an employee of Ritz Foods not to perform services for his employer in San Rafael, San Anselmo and Fairfax, California.

21. Also on or about October 14, 1970, respondents, by their agents and pickets, by threats and picketing, induced and encouraged drivers of various employers

engaged in commerce or in industries affecting commerce not to handle goods destined for Petrini's Meat, Inc. As a result of such activities, deliveries from various employers were not made. As a further consequence of such activities, Petrini's store received no deliveries of any kind after respondents' picketing began there on October 14, 1970.

22. On or about October 15, 1970, respondents, by their agents and pickets, picketed a Safeway truck near or adjacent to the Safeway store at 700 B Street, San Rafael, California. As a consequence of such picketing and other conduct, the Safeway driver refused to perform services for Safeway.

23. On or about October 16, 1970, respondents, by their pickets and agents, picketed the driveway and loading dock entrances to the Lucky store at 720 Center Street, Fairfax, California. The pickets carried signs some of which read: "This Seafarer Supports I. J. Strikers" and "Seamans Support I. J. Strikers."

24. Also on or about October 16, 1970, respondents, by their agents and pickets, picketed the customer entrances, delivery entrance and parking lot of the Safeway store located at 900 Sir Francis Drake Boulevard, San Anselmo, California. Some of the pickets carried signs with legends stating "Seamans Support I. J. Strike." Others carried signs stating "This Longshoreman Supports I. J. Strike."

25. Also on or about October 16, 1970, respondents, by their pickets and agents, picketed with from 12 to 15 pickets in the area of the Red Hill Shopping Center in San Anselmo, California, in the vicinity of a store of Safeway, of Longs Drugs (herein called Longs), and Sears Roebuck & Co. (herein called Sears). Such picketing was engaged in with signs which identified the pickets as "Longshoremen" and "Seamen." Among

such pickets was a person wearing a button identifying him as a steward for Respondent Local 10.

26. On various occasions since about October 8, 1970, respondents, and each of them, acting jointly and in concert and participation with each other, and in furtherance and support of Respondent Local 21's dispute with the Journal, have, by picketing, oral appeals, instructions, directions and orders, and by other means, induced or encouraged individuals employed by persons engaged in commerce or in an industry affecting commerce to engage in work stoppages and refusals to perform services for their employers and have threatened, coerced and restrained such persons.

VI. The acts and conduct of respondents set forth in paragraph V and its subparagraphs 1 through 26 above, have been engaged in by respondents acting as joint venturers and in concert and participation with each other.

VII. The acts and conduct of respondents set forth in paragraph V and its subparagraphs 1 through 26 above, and in paragraph VI above, have been engaged in by respondent labor organizations and the individual respondents named herein acting as joint venturers and in concert and participation with each other.

VIII. By the acts and conduct described in paragraph V and its subparagraphs 1 through 26 above, and by other means, respondents have engaged in, and have induced or encouraged individuals employed by Arden-Mayfair, Incorporated (herein called Mayfair), Garden City Transportation Co., Ltd. (herein called Garden City), Lucky Stores, Inc. (herein called Lucky), Long's Drug Stores Incorporated (herein called Long's), Safeway Stores, Incorporated (herein called Safeway), Foremost Dairy Company (herein called Foremost), United Markets, Inc.

(herein called United), Ritz Foods (herein called Ritz), Petrini's Meat, Inc. (herein called Petrini's), Olson Brothers, Incorporated (herein called Olson), Sears, Roebuck & Co. (herein called Sears), Greyhound Bus Lines (herein called Greyhound), Parisian Bakeries, Inc. (herein called Parisian), American Bakeries Co. (herein called American), Nielsen Freight Lines, Inc. (herein called Nielsen), Rath Packing Company (herein called Rath), Kockos Brothers (herein called Kockos), Cala Foods, Inc. (herein called Cala), Baroni French Baking Co. (herein called Baroni), Kilpatrick's Bakeries, Inc. (herein called Kilpatrick's), Lincoln's Market (herein called Lincoln), Tuttle Cheese Co. (herein called Tuttle), Svenhard Bakeries (herein called Svenhard), Rawson Company (herein called Rawson), Armour and Company (herein called Armour), and the Coca-Cola Bottling Co. (herein called Coca-Cola), by their suppliers, by carriers making deliveries to or pickups from such persons, and by other persons engaged in commerce or in an industry affecting commerce, to engage in strikes or refusals in the course of their employment to use, manufacture, process, transport or otherwise handle or work on goods, articles, materials or commodities, or to perform services, and have threatened, coerced or restrained such persons with an object or objects of:

(1) forcing or requiring Mayfair, Garden City, Lucky, Long's, Safeway, Foremost, United, Ritz, Petrini's, Olson, Sears, Greyhound, Parisian, American, Nielsen, Rath, Kockos, Cala, Baroni, Kilpatrick's Lincoln, Tuttle, Svenhard, Rawson, Armour, Coco-Cola, and other persons to cease placing advertisements in or to otherwise cease doing business with each other or with the Journal.

(2) forcing or requiring the customers and suppliers of such persons to cease doing business with such persons in order to compel such persons to cease placing advertisements in or otherwise cease doing business with the Journal.

IX. (Deleted.)

X. By their acts and conduct hereinabove set forth, Respondent Local 21, Respondent Local 70, Respondent Local 85, Respondent Abrams, Respondent Muniz and Respondent Richardson, and each of them, have knowingly and wilfully, and with intent to defy, disobeyed and violated the Orders of this Court entered herein on February 13 and April 28, 1970.

CONCLUSIONS OF LAW

1. Respondents John DeMartini, Vice President, and Don Abrams, Organizer, were, and at all times material herein have been, representatives and agents of Respondent Local 21 within the meaning of the National Labor Relations Act, as amended (herein called the Act) and the Orders of this Court entered herein on February 13 and April 28, 1970.

2. Respondent Timothy J. Richardson, Business Manager and Recording Secretary, was, and at all times material herein has been, a representative and agent of Respondent Local 85 within the meaning of the Act and the Orders of this Court entered herein on February 13 and April 28, 1970.

3. Respondent Local 70 is, and at all times material herein has been, a labor organization within the meaning of the Act and the Orders of this Court entered herein on February 13 and April 28, 1970.

4. Respondent James R. Muniz, President of Respondent Local 70, is, and at all times material herein has been, a representative and agent of Respondent Local 70 within the meaning of the Act.

5. Respondents have engaged in acts and conduct as set forth in the above Findings of Fact which affect the operations of Mayfair, Garden City, Lucky, Long's Safeway, Foremost, United, Ritz, Petrini's, Olson, Sears, Greyhound, Parisian, American, Nielsen, Rath, Kockos, Cala, Baroni, Kilpatrick's, Lincoln, Tuttle, Sevenhard, Rawson, Armour, Coca-Cola, and other persons engaged in commerce within the meaning of Section 2, subsections (6) and (7) of the Act.

6. (Deleted.)

7. By their acts and conduct set forth in the above Findings of Fact, Respondent Local 21, Respondent Local 70, Respondent Local 85, Respondent Abrams, Respondent Muniz, and Respondent Richardson, and each of them, have knowingly and wilfully, and with intent to defy, disobeyed, violated, resisted and disregarded the Orders of this Court entered on February 13 and April 28, 1970, which acts and conduct constitute criminal contempt of said Orders and of this Court.

DATED AT San Francisco, California, this 21st day of January, 1971.

W. T. SWEIGERT,
United States District Judge.

APPENDIX E

Judgment Imposing Fines and Penalties in Re: Criminal Contempt

* * * * *

[2727] The COURT: Anything further from anyone that would like to be heard?

All right, I think, then at this time, the Court will proceed to judgment.

Have I got the prior order?

I might say in this matter, before pronouncing judgment, that I agree and I think all counsel should agree that the issue here is not the strike of Typographical Union No. 21 against the Independent-Journal. No question has been raised here about the legality of that strike or the right of the union involved or any other unions that wish to support it to picket in support of that strike. The issue presented to this Court was something entirely different. It was an issue as to whether on not these three unions, Typographical Union 21, Teamsters Union No. 85 and Teamsters Union No. 70 had, in concert or otherwise, turned what was a perfectly legitimate strike against the Independent-Journal into an attempt to expand it into a secondary strike involving virtually all of Marin County insofar as the deliveries by neutral trucks to neutral stores, retail outlets was concerned. There was some evidence in the record of violence, not great, but there—was evidence in the record of [2728] threats of violence by people connected with those unions, not only against what we might call laymen, but even against their own truck men from other labor unions.

And I am perfectly satisfied that this activity continued for somewhere within a month, so far as the evidence shows in this case, and I am also quite satisfied that all of these unions had notice and knowledge of the two court orders in question; Typographical Union 21 and Typographical Union 85, by direct service, which is not substantially in dispute, and Teamsters Local No. 70, not by direct service of notice, but otherwise by circumstantial evidence, in this case which leads the Court to believe that it would be ridiculous to hold that Mr. Muniz, who was president of Local 70 and over there on the ground taking an active part in it in connection with people from the other labor unions, didn't know about this order affecting one of his kindred teamster unions, so there is no doubt at all in the Court's mind about the violation of the Court order and about the fact that it was a violation that was made with knowledge.

On the other hand, I recognize that perhaps there were some provocations involved here, the long duration and stubborn resistance of the employer to the strike at Local 21 and also there was some, perhaps over-zealous reaction here by members, some members of these unions.

However, the unions that have been found guilty, all [2729] had people of—in their high echelons over there on the ground; Mr. Muniz for Local 70, Mr. Richardson for, I think it was—that's 85; isn't it? And the other gentleman for—for Local 21. I am trying to remember his name. Oh, yes. Mr. Abrams, and other people connected with these unions were on the ground and their activities were not limited to furthering the normal legitimate strike activities of Local 21 against the employer, Independent-Journal. Rather, their activities, according to the evidence, is clearly connected with an attempt to spread this isolated strike into an expanded strike throughout the county, an attempt which, in its effects, reached somewhat serious proportion.

I said before, I am satisfied, from the evidence, that there was knowledge of the Court's order and it is essential to the system under which we live, system of law and order, mitigated by considerations of justice that Court's orders must be obeyed. They may be wrong, but until they are set aside or until they are appealed from, or otherwise stayed, they must be obeyed. And this is particularly true in the case of corporations.

Now, a union is, in one sense, a corporation. It is not a business corporation such as sometimes appears before this Court and is subject to fine, but it is, nevertheless, a so-called non-profit corporation and it is recognized for many purposes as a legal personality and these, the unions, [2730] by reason of this recordation, assume certain responsibilities for compliance with the law. I do not want to overpaint what happened in this incident, nor do I wish to underestimate it. I, therefore, after very serious and careful consideration to the evidence in this case, and to the presentations that have been made here to the Court at this hearing, insofar as the criminal contempt of this Court is concerned, that as to Typographical Union No. 21, there should be a fine of $25,000 with the following qualification, however. That as to $10,000 of that fine, there will be a stay of execution for 15 days. As to the balance of $15,000, there will be a suspension of payment for a payment of one year and with the following conditions, that if the Court is satisfied at the end of the period of one year that Typographical Union No. 21 has not directly or indirectly violated again the orders of this Court in this respect, that the balance of that fine will be remitted.

560-131—74——6

Also, it is understood that this period of one year is subject to either shortening or extension and the Court observes the power of the Court to, and the Court reserves power to do so.

As to Typographical—as to Teamsters Union No. 21, the——

Mr. BEESON: Excuse me, Your Honor.

The COURT: As to Teamsters Union Local 85, the [2731] Court is of the view that that union also should be fined the sum of $25,000 with a similar understanding. Namely, that $10,000 thereof will be stayed until, as to payment, for 15 days, and as to the balance of $15,000, there will be a suspension of payment of that balance for a period of one year with the understanding that if the Court is satisfied at the end of one year there has been no further violation of its orders in question, that that balance will be remitted. The Court also reserving power to either shorten that period of one year or to extend it.

As to Teamsters Union Local 70, the Court is also of the view that that union should be fined the sum of $25,000 with a similar understanding that $10,000 thereof be stayed for a period of 15 days and that the balance of $15,000 shall be suspended for a period of one year with the understanding that if Local 70, by the finding of the Court subsequently has not violated this, these orders of Court, that that balance will be remitted as to that union.

The Court similarly reserving the power to either extend or to shorten that.

A formal order will be prepared reflecting these views, and indicating that what the Court says about future violations of the order means that these unions will not directly or indirectly, either alone or in conjunction with others, further violate the terms of the injunctions in [2732] question.

So far as the unions are concerned, and so—I believe that that, that this, these fines and this penalty will be not too heavy nor too light. In view of the nature of the situation that we face to vindicate the principle that unions just as well as other corporations, all of these corporations, assuming responsibility to the public and having unique powers and influence, themselves, must obey the orders of the Court.

We will now proceed to the individual defendants. I would like to have Mr. Muniz, Mr. Richardson and Mr. Abrams step forward.

This is Mr. Richardson?

Mr. RICHARDSON: Yes.

The COURT: This is Mr. Muniz?

Mr. ABRAMS: Abrams.

The COURT: This is Mr. Muniz?

As to the three defendants, the Court has found each of you guilty of violation of the orders of the Court and human mind is frail and I may be wrong, but that's my finding from the evidence in this case, and I believe that with respect to the individuals, there is no need for this Court to vindicate its integrity here by fining these individuals. This is an institution matter. I am not going to fine these individuals and furthermore, I don't think that the situation [2733] here calls for any drastic action with respect to these individuals who, as I say, are instrumentalities in the movement, in the institution of design here. I, therefore, am going to suspend imposition of penalty in this case so far as these three men are concerned; two of them being president of their union and one of them being secretary.

Mr. BEESON: Your Honor, Mr. Abrams is an organizer.

The COURT: Mr. Abrams being an organizer. I beg your pardon.

Mr. Muniz being——

Mr. MUNIZ: President.

The COURT: Mr. Richardson being the——

Mr. RICHARDSON: Recording secretary.

The COURT: I am going to suspend any penalty with respect to these individuals and place them on probation for one year subject to the Court's right to shorten or to extend that period with the understanding, however, that if—that the condition of probation is that these men do nothing to further any additional violations of the order in question, of the purported orders in question, with the understanding that if they break what is, I believe, a very fair condition of their probation, that they subject themselves to the power of this Court to impose a sentence of imprisonment of up to, but not exceeding, six months. And I believe that unless these gentlemen, as individuals, have anything to say [2734] to me, that that's the way the matter will stand.

I think, however, it's been made clear that any statements that you three gentlemen would like to offer have already been made by your counsel.

Do you understand that, Mr. Richardson?

Mr. RICHARDSON: Yes, sir.

The COURT: And you, Mr. Abrams?

Mr. ABRAMS: Yes, Your Honor.

The COURT: And you, Mr. Muniz?

Mr. MUNIZ: Yes, Your Honor.

The COURT: All right, thank you very much, gentlemen.

Mr. POOLE: Your Honor, may I be heard at this moment?

The COURT: Yes.

Mr. POOLE: Your Honor is mindful of the position expressed by counsel and the authorities presented earlier in this hearing concerning the power of the

Court to impose certain sentences in the light of decisions of the United States Supreme Court in cases ranging from United States versus Barnett——

The COURT: What is the point of your remarks?

Mr. POOLE: The point of my remarks, Your Honor, is I ask Your Honor to reconsider the fine which Your Honor has now imposed upon the two unions, Locals 85 and 21 because those fines exceed the allowable pecuniary fine set forth in Title 18 of the United States Code, Section 1, relating to [2735] petty offense. I made these—this position clear to Your Honor during the proceedings.

The COURT: I have considered that and I have made my interpretation and I—it's no need to reconsider what I have already considered. The fines that I have levied will stand. You have your remedy by appeal.

Mr. POOLE: I understand.

The COURT: I may well be wrong.

Mr. POOLE: Well, I know Your Honor doesn't desire argument. I don't intend to. I think the record should show, Your Honor—let me just make this brief statement for the record that in view of the Court's denial of the jury trial requested on behalf of Locals 85 and 21, it is our position, and we therefore move the Court to remit so much of the sentence that exceeds that entitled petty offense, based upon the authority of the Supreme Court decisions in Bloom versus Illinois, *Sheaf* versus *Schnsckenberg,* United States versus Barnett, cases which we have already cited to Your Honor previously.

The COURT: Yes, I am satisfied personally that the Court is not limited to that minimum fine of $500 insofar as the defendant unions are concerned.

If I am wrong, I will gladly—be glad to acknowledge it if the upper court so rules.

Mr. POOLE: Your Honor understands we are not [2736] challenging the power of the Court in a contempt case to impose a substantial fine. We are talking about the power of the Court as limited by its denial for a demand for a jury trial. That's what our position is.

The COURT: I understand your position perfectly.

Mr. POOLE: Thank you.

The COURT: And the record will show that I denied your request.

Mr. POOLE: Thank you.

Mr. VAN BOURG: Your Honor, on behalf of Local 70, we, of course, join in the request and the motion and request a ruling on the record.

The COURT: The motion is denied.

APPENDIX F

[caption omitted]

Order Re: Reimbursement of Costs and Expenses

April 19, 1971

SWEIGERT, J.

Roy O. Hoffman, Regional Director of the Twentieth Region of the National Labor Relations Board, herein called the Board, having petitioned this Court for an Order to Show Cause why respondents San Francisco Typographical Union No. 21, International Typographical Union, AFL–CIO (herein called Respondent Local 21), its officers and agents, and John DeMartini (herein called Respondent DeMartini), its Vice President, and Don Abrams (herein called Respondent Abrams), its Organizer; Brotherhood of Teamsters & Auto Truck Drivers Local No. 70, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (herein called Respondent Local 70), its officers and agents, and James R. Muniz (herein called Respondent Muniz), its President; Brotherhood of Teamsters & Auto Truck Drivers Local No. 85, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (herein called Respondent Local 85), its officers and agents, and Timothy J. Richardson (herein called Respondent Richardson), its Business Manager and Recording Secretary; and International Longshoremen's and Warehousemen's Union, Local No. 10 (herein called Respondent Local 10), and its officers and agents; herein jointly and severally referred to as

respondents, should not be adjudged in civil contempt of orders of this Court entered on February 13, 1970 and April 28, 1970, and for other civil relief, and the petitioner having further requested this Court to institute, *sua sponte,* criminal contempt proceedings against said respondents, and each of them, and an order of this Court having been executed on October 19, 1970 requiring said respondents to appear before this Court on October 23, 1970, and show cause, if any there be, why they, and each of them, should not be adjudged in civil contempt of this Court as prayed, and to answer the petition filed herein, and further requiring said respondents to personally appear before the Court and show cause, if any there be, why they, and each of them, should not be adjudged in, and punished for, criminal contempt; and said respondents having appeared personally and by council, and the aforesaid matters having come on to be heard by this Court commencing on October 23, 1970, and during the course of these proceedings, petitioner having amended his petition to delete the name of Henry Montano as a respondent; and full opportunity having been afforded to all parties to offer testimony, evidence, exhibits, and arguments, and the Court, after consideration of all the testimony, evidence, exhibits, and arguments offered, having on December 24, 1970, issued its Order and Adjudication in Criminal Contempt as to Respondent Local 21, Respondent Local 85, Respondent Local 70, Respondent Abrams, Respondent Richardson and Respondent Muniz, and on the same date having issued its Order and Adjudication in Civil Contempt as to all the respondents; and on January 21, 1971, this Court having made and entered Findings of Fact and Conclusions of Law Re: Criminal Contempt Proceedings supplementary to and *in extenso* of the December 24, 1970 Order and Adjudication in

Criminal Contempt; and on January 22, 1971, this Court, having afforded all the respondents additional opportunity to offer evidence, testimony, exhibits and argument on the civil contempt proceedings, and Respondent Local 10 having requested an opportunity to present additional evidence, this Court having set aside the December 24, 1970 Order and Adjudication in Civil Contempt as to Respondent Local 10 for such purpose, and having received and considered the additional evidence offered by Respondent Local 10; and upon consideration of such additional evidence, and the entire record in this case, the Court having reaffirmed its Order and Adjudication in Civil Contempt of December 24, 1970 as to all the respondents, and supplementary to and in *exteno* of such order, having on January 28, 1971 made and entered its Findings of Fact and Conclusions of Law Re: Civil Contempt Proceedings; and, pursuant to this Court's Order and Adjudication in Civil Contempt of December 24, 1970, petitioner having on February 11, 1971 filed his Statement of Costs and Expenses and having requested an order directing respondents to reimburse the Board for such costs and expenses; and on January 26, 1971, January 28, 1971, and February 11, 1971, the Charging Party in the proceedings before the Board, California Newspapers, Inc., d/b/a Independent Journal (herein called the Charging Party), Lucky Stores, Inc., Arden-Mayfair, Inc., Purity Stores, Inc., Cala Foods, Inc., and United Markets, Inc. (herein collectively called Food Employers) and the City of San Rafael, having filed with the Court petitions for the imposition of compensatory fines, and the matter of the reimbursement of the Board for costs and expenses and the imposition of the aforesaid fines having come on for hearing on February 19, 1971, and March 26, 1971, and all parties having been afforded full op-

portunity to present evidence and to argue on the matters, and the Court being duly advised in the premises, it is hereby

ORDERED, ADJUDGED AND DECREED that petitioner's request for reimbursement, as amended on the record at the hearing on March 26, 1971, be, and it hereby is, allowed, but only in the sum of $21,-208.15, that said sum reflecting the deduction from the total claimed by petitioner of $167.11, representing the cost of automobile tires of a deputy United States marshal allegedly slashed in the course of making service of process; it is hereby further

ORDERED, ADJUDGED AND DECREED that the said sum of $21,208.15 shall constitute a judgment against Respondent Local 21, Respondent Local 70, Respondent Local 85, and Respondent Local 10, and against each of them, and that the said respondent, jointly and severally and equally and entirely, shall be, and are, obligated to discharge the same; it is further

ADJUDGED AND DECREED that the costs and expenses hereinabove awarded to petitioners, or incurred in the course of the investigation, preparation, presentation and prosecution of the criminal as well as the civil contempt proceedings herein involved, equally and entirely, and by virtue of the record in the criminal contempt proceedings, by agreement of the parties and by order of the Court, having been made a part of the record in the civil contempt proceedings, are chargeable entirely to the civil proceedings; it is further

ORDERED, ADJUDGED AND DECREED that respondents pay to petitioner within 30 days from the date of this order the amount hereinabove awarded and that, in the event such payment is not made, attachment issue against Respondent Local 21, Respondent Local 70, Respondent Local 85 and Respondent Local 10; it is further

ORDERED, ADJUDGED AND DECREED that the petitions of the Charging Party, of the City of San Rafael, and of the Food Employers be, and they hereby are, denied, without prejudice to the rights of the said parties to institute appropriate proceedings under the provisions of 29 U.S.C. Section 187, or any other provision of law; it is further

ORDERED, ADJUDGED AND DECREED that respondents herein, and each of them, shall fully comply with all the terms and provisions of subparagraphs (b) and (c) of the Order and Adjudication in Civil Contempt of this Court of December 24, 1970, and that respondents, and each of them, shall file with the Clerk of this Court and serve copies thereof on petitioner within 15 days from the date of this order, a sworn statement showing in detail the steps taken by respondents to comply with this Court's said order; it is further

ADJUDGED AND DECREED that this Court shall, and it hereby does, reserve the power to require payment by respondents of any further costs and expenses which may hereafter be incurred by petitioner in connection with these or any appellate court proceedings.

DATED AT San Francisco, California, this 19th day of April, 1971.

W. T. SWEIGERT,
United States District Judge.

APPENDIX G

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), are as follows:

SEC. 8. (b) It shall be an unfair labor practice for a labor organization or its agents—

* * * * *

(4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—

* * * * *

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person * * *. *Provided,* That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

* * * * *

Provided further, That for the purposes of this paragraph (4) only, nothing contained in

such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution;

* * * * *

SEC. 10. (h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (U.S.C., Supp. VII, title 29, secs. 101–115).

* * * * *

(*l*) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of pargraph (4) (A), (B), or (C) of section 8(b), or section 8(e) or section 8(b)(7), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a

complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: *Provided further,* That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period: * * * Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: *Provided further,* That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. * * *

Section 11 of the Norris-LaGuardia Act, 47 Stat. 72, repealed by 62 Stat. 862, provided:

> In all cases arising under this Act in which a person shall be charged with contempt in a court of the United States (as herein defined), the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed: *Provided,* That this right shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to apply to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders, or process of the court.

U.S. GOVERNMENT PRINTING OFFICE: 1974

Supreme Court, U. S.
FILED
JAN 11 1975
MICHAEL RODAK, JR., CLERK

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1973

No. 73-1924

JAMES R. MUNIZ and BROTHERHOOD OF TEAMSTERS AND AUTO TRUCK DRIVERS LOCAL NO. 70, IBTCHWA,
Petitioners,

VS.

ROY O. HOFFMAN, DIRECTOR, REGION 20, NATIONAL LABOR RELATIONS BOARD,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR PETITIONERS

VAN BOURG, ALLEN, WEINBERG,
WILLIAMS AND ROGER,
VICTOR J. VAN BOURG,
DAVID A. ROSENFELD,
45 Polk Street,
San Francisco, California 94102,
Attorneys for Petitioners.

SHELDON OTIS,
506 Monroe Street,
Detroit, Michigan 48226,
Of Counsel.

PERNAU-WALSH PRINTING CO., 562 MISSION STREET - SAN FRANCISCO, CA 94105

Subject Index

I

Page

Opinions below 1

II

Jurisdiction 2

III

Questions presented 2

IV

Statutes involved 3

V

Statement of the case 4

VI

Summary of the arguments 9

A. The constitutional issue 9

B. The statutory issue 10

The Constitutional Issue

VII

Trial by jury is required where a criminal contemnor is fined $10,000 for indirect contempt by willfully disobeying a court order 11

Introduction 11

A. Jury trial is required whether a sentence is by fine or by imprisonment 14

B. The objective standard of 18 U.S.C. Section 1(3) governs as to whether or not a crime is serious for purposes of jury trial 18

The Statutory Issue

VIII

A summary of the statutory framework 21

IX

Section 3692 is unambiguous on its face and must be construed in favor of the right it grants 23

X Page

Petitioners were charged with contempt arising out of a labor dispute within the meaning of Section 3692 26

XI

Section 10(h) does not exempt 10(l) injunctions from the provisions of Section 3692 29

XII

Section 10(l) does nothing more than grant jurisdiction to the District Court to issue temporary injunctions 35

XIII

The scope of Section 3692 is not restricted to contempts arising out of Norris-LaGuardia injunctions 38

XIV

The necessary power of the Courts to coerce compliance with injunctions is preserved 45

XV

Conclusion 48

Table of Authorities Cited

Cases Pages

American Postal Workers Union v. United States Postal Service, 356 F.Supp. 335 (E.D. Tex. 1972) 43
Auto Workers v. Wisconsin Employment Relations Bd., 351 U.S. 266 (1956) 43

Bakery Sales Drivers Union v. Wagshal, 333 U.S. 437 (1948) 35
Baldwin v. New York, 399 U.S. 166 (1970) 9, 12, 13, 14, 16, 18, 19, 20
Banks v. Grain Trimmers Ass'n, 390 U.S. 459 (1968) 24
Blankenship v. Kurfman, 96 F.2d 450 (7th Cir. 1938) 42
Bloom v. Illinois, 391 U.S. 194 (1968) ..8, 9, 12, 14, 17, 18, 19, 23
Brotherhood of Locomotive Firemen and Engineers v. Bangor & Aroostook R.R. Co., 380 F.2d 570 (D.C. Cir. 1967), cert. denied 389 U.S. 327 (1967) 46
Brotherhood of Railway Trainmen v. Chicago River & Indiana R.R. Co., 353 U.S. 30, reh. denied 353 U.S. 948 (1957) 47
Building & Construction Trades Council v. Alpert, 302 F.2d 594 (1st Cir. 1962) 37
Burlington Mills Corp. v. Textile Workers Union, 44 F. Supp. 699 (W.D. Va. 1941) 42

Callan v. Wilson, 127 U.S. 540 (1888) 18
Campbell v. United States, 365 U.S. 85 (1961) 24
Cheff v. Schnackenberg, 384 U.S. 373 (1966) 8, 12, 13, 18, 19
Codiposti v. Pennsylvania, 41 L.Ed.2d 912 (1974) ..9, 11, 13, 14, 19
Compton v. Teamsters, Local 901, 49 L.R.R.M. 2835 (D.P.R. 1962) 37

District of Columbia v. Clawans, 300 U.S. 617 (1937) 19
District of Columbia v. Colts, 282 U.S. 63 (1930) 18
Donnelly Garment Co. v. Internat'l Ladies Garment Workers Union, 99 F.2d 309 (8th Cir. 1938), cert. denied 305 U.S. 662 (1939) 42
Douds v. Local 294, I.B.T., 75 F.Supp. 414 (N.D. N.Y. 1947) 32
Duncan v. Louisiana, 391 U.S. 145 (1968) 9, 12, 16, 17, 19
Dyke v. Taylor Implement Mfg. Co., 391 U.S. 216 (1968) 9, 12, 18

Pages

Frank v. United States, 395 U.S. 147 (1969) 9, 11, 12, 13, 19, 20, 23

Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers, Local 70, 415 U.S. 423 (1974) 17, 37
Green v. United States, 356 U.S. 165 (1958) 11, 23

Hill v. United States ex rel. Weiner, 84 F.2d 27 (3d Cir. 1936), rev'd on other grounds 300 U.S. 105 (1937) 42

In Re Fair Lawn Educ. Ass'n, 63 N.J. 112, 305 A.2d 72, cert. denied 414 U.S. 855 (1973) 14
In Re Holland Furnace Co., 341 F.2d 548 (7th Cir. 1965), cert. denied 381 U.S. 924 (1965) 14
In Re Puerto Rico Newspaper Guild Local 225, 476 F.2d 856 (1973) 13, 14
In Re Union Nacional de Trabajaderos, 502 F.2d 117.... .....10, 14, 26, 29, 31, 33, 36, 37, 39
Internat'l Bro. of Teamsters v. Internat'l Union of Brewery, etc. Workers, 106 F.2d 871 (9th Cir. 1939) 42

Jaffee v. Newspaper & Mail Deliverers Union, 97 F.Supp. 443 (S.D. N.Y. 1951) 32

Lauf v. E. G. Shinner & Co., 303 U.S. 323 (1938) 27
Lebaron v. Printing Specialties & Paper Converters Union, Local 388, 75 F.Supp. 678 (S.D. Ca. 1948), aff'd 171 F.2d 331 (9th Cir. 1948) 31, 37

Madden v. Grain Elevator, Flour & Feed Mill Workers, 334 F.2d 1014 (7th Cir. 1964) 31, 46
McGowan v. State, 258 So.2d 801 (Miss., 1972), cert. denied 409 U.S. 1006 (1972) 14
Michaelson v. United States, 266 U.S. 42 (1924) ..23, 25, 34, 45
Mitchell v. Barbee Lumber Co., 35 F.R.D. 544 (S.D. Miss. 1964) 28
Morris v. Schoonfield, 399 U.S. 508 (1970) 16

New Negro Alliance v. Sanitary Grocery Co., 303 U.S. 552 (1938) 27, 42
New York Telephone Co. v. Communication Workers of America, 445 F.2d 39 (2d Cir. 1971) 37
N.L.R.B. v. Allis-Chalmers Mfg. Co., 388 U.S. 175 (1967) 24

Pages

N.L.R.B. v. Red Arrow Freight Lines, 193 F.2d 979 (5th Cir. 1952) 46
N.L.R.B. v. Hospital & Institutional Workers, Local 250, 78 L.R.R.M. 2095 (9th Cir. 1971) 31
N.L.R.B. v. Washington Aluminum Co., 370 U.S. 9 (1962) 27
North American Coal Corporation v. Local Union 2262, United Mine Workers of America, 497 F.2d 459 (6th Cir. 1974) 10, 13, 48

Oberman & Co. v. United Garment Workers of America, 21 F.Supp. 20 (W.D. Mo. 1937) 42

Penello v. I.L.A., Local 1248, 78 L.R.R.M. 2009 (E.D. Va. 1971), aff'd as modified 455 F.2d 942 (4th Cir. 1971) ..31, 37
Philadelphia Marine Trade Ass'n v. Internat'l Longshoremen's Ass'n, Local 1291, 368 F.2d 932 (3d Cir. 1966), rev'd on other grounds 389 U.S. 64 (1967) 28, 46

Rankin v. Shanker, 23 N.Y.2d 111, 242 N.E.2d 802 (1968), stay denied 393 U.S. 930 (1968) 14
Restaurant Associates Industries v. Local 71, 79 L.R.R.M. 2502 (E.D. N.Y. 1972) 47, 48
Russell v. United States, 86 F.2d 389 (8th Cir. 1936) 42

Sabbath v. United States, 391 U.S. 585 (1968) 24
Schauffler v. Local 1291, International Longshoremen's Association, 189 F.Supp. 737 (E.D. Pa. 1960), rev'd on other grounds 292 F.2d 182 (3rd Cir. 1961) 46
Schick v. United States, 195 U.S. 65 (1904) 19
Sears, Roebuck & Co. v. Carpet, Linoleum, etc., Local Union No. 419, 397 U.S. 655 (1970) 31
Shillitam v. United States, 384 U.S. 364 (1966) 12, 16, 45
Sinclair Refining Co. v. Atkinson, 370 U.S. 195 (1962) ... 28
Smith v. United States, 360 U.S. 1 (1959) 24
Standard Oil Co. v. United States, 221 U.S. 1 (1910) 20

Tanner Motor Livery, Ltd., 148 N.L.R.B. 1402 (1964) 27
Tate v. Short, 401 U.S. 395 (1971) 16
Taylor v. Hayes, 41 L.Ed.2d 897 (1974) 11, 14, 18
The Boys Markets, Inc. v. Retail Clerks Union Local 770, 398 U.S. 235 (1970) 28, 37, 46, 47, 48

	Pages
United States v. Barnett, 376 U.S. 681 (1964)	12
United States v. Polk, 438 F.2d 377 (6th Cir. 1971)	9, 10, 13, 14, 20
United States v. Robinson, 449 F.2d 925 (9th Cir. 1971)	43
United States v. United Mine Workers of America, 330 U.S. 258 (1947)	8, 15, 20, 40, 41, 43, 45
United States Steel Corp. v. United Mine Workers of America, 456 F.2d 483 (3d Cir. 1972)	37
Williams v. Illinois, 399 U.S. 235 (1970)	16

Constitutions

United States Constitution:	
Art. III, Sec. 2	9, 10, 14, 20, 23
Amendment VI	2, 3, 9, 10, 14
Amendment VIII	15, 20
English Bill of Rights of 1688	15

Rules

Fed.R.Civ.P. 65(d)	37
F.R.Crim.P.:	
Rule 2	24
Rule 7(a)	24
Rule 42	23, 28, 45, 48

Statutes

18 U.S.C., "Crimes and Criminal Procedures," 62 Stat. 683	22, 43
Section 1(3)	9, 10, 13, 14, 18, 19, 20
Section 402	42, 45
Section 3691	23, 24
Section 3692	passim
28 U.S.C. Sec. 1254(1)	2
29 U.S.C. (Norris-LaGuardia Act) Sec. 101, 47 Stat. 70	21
29 U.S.C.:	
Section 4 (29 U.S.C. § 104)	21, 28, 37, 47
Section 6	34

	Pages
Sections 7-10	21
Section 10	34
Section 102	42
Section 111	21, 22, 28, 30, 34, 35, 38, 39, 40, 41, 43, 46
Section 112	45, 48
Section 113(a)	26
Section 113(b)	26
Section 113(c)	26, 27, 42
Section 151	21, 27
Section 152(9)	26, 27
Section 159(9)	27
Section 160	25
29 U.S.C. Sec. 160(b), 10(b):	
Section 10(b)	31, 32
Section 10(c)	31, 32
Section 10(d)	32
Section 10(e)	31, 32, 33
Secs. 10(e)-10(h)	21, 22, 42
Section 10(f)	31, 32, 33
Section 10(g)	32, 33
Section 10(h)	11, 22, 29, 30, 31, 32, 33, 34, 35, 36,
Section 10(j)	22, 32, 33, 35, 36, 37, 38, 39, 45
Section 10(l)	4, 11, 22, 25, 29, 30, 31
Section 164(c)	26
Section 185(a)	47
29 U.S.C. (Fair Labor Standards Act) §§201-19, 52 Stat. 1060	27, 28
Section 402(g)	26, 27
Section 528	23
42 U.S.C.:	
Section 1971(e)	19
Section 1973 (l)a	23
Section 1975(g)	19
Section 1995	19, 23
Section 2000(h)	23
Labor Management Relations Act of 1947, 61 Stat. 136, amended	22
62 Stat. 866	40
Wagner Act, 49 Stat. 449	21, 27

Miscellaneous Pages

H.R. 2200, 79th Cong., 2d Sess. (1946) 44

H.R. Report No. 304, pp. A2-A4 80th Cong., 1st Sess. 1947 19

H.R. Report No. 304, 80th Cong., 1st Sess., p. A30 45

93 Cong. Rec. 5049 (1947) 45

Bartosic & Lanoff, Escalating the Struggle Against Taft-Hartley Contemnors, 39 U. Chi. L. Rev. 255 (1972) 17, 18, 22, 23, 45

Anno: Distinction Between "Petty" and "Serious" Offenses for purposes of Federal Constitutional Right to Trial by Jury—Supreme Court Cases, 26 L.Ed.2d 916 (1970) ... 13

16 Frankfurter and Corcoran, Petty Federal Offenses and the Constitutional Guarantee of Trial By Jury, 39 Harv. L. Rev. 917 (1926) 16

Gaylin, Partial Justice, A Study of Bias in Sentencing (Alfred A. Knopf, 1974) 18

Note, "Accommodation," 72 Harv. L. Rev., 354 (1958) 42

"The Labor Management Relations Act and the Revival of the Labor Injunction," 48 Col. L. Rev. 759 (1948) 30, 35

Legislative History of the National Labor Relations Act, 1935 (N.L.R.B., 1949) 27

Legislative History of the Labor Management Relations Act, 1947 (N.L.R.B., 1948) 27, 33, 38, 43

The National Commission on Reform of Federal Criminal Laws: Study Draft of a New Federal Criminal Code (U.S. Govt. Printing Office, 1970) 19, 20

Rubin: The Law of Criminal Correction (West Pub. Co., 1963) 15

Seagle, Fines, 6 Encyc. Soc. Sci. (1931) 15

1 Stephen, History of the Criminal Law of England (1883) 15

"Thirty-Ninth Annual Report of the National Labor Relations Board for the Fiscal Year Ended June 30, 1974" (N.L.R.B., 1974) 23

8 Wm. & Mary L. Rev. 76 19

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1973

No. 73-1924

JAMES R. MUNIZ and BROTHERHOOD OF TEAMSTERS AND AUTO TRUCK DRIVERS LOCAL NO. 70, IBTCHWA,
Petitioners,

VS.

ROY O. HOFFMAN, DIRECTOR, REGION 20, NATIONAL LABOR RELATIONS BOARD,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR PETITIONERS

I

OPINIONS BELOW

The opinion of the Court of Appeals for the Ninth Circuit is reported at 492 F.2d 929. The judgment of the court imposing contempt penalties is contained

in the reporter's transcript of the proceedings. (G.A. 41a-48a).[1]

II

JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit was entered on January 25, 1974. A timely petition for rehearing was denied on March 26, 1974. The petition for writ of certiorari was granted on November 11, 1974. This Court has jurisdiction under 28 U.S.C. § 1254(1).

III

QUESTIONS PRESENTED

1. Whether Article III, Section 2 and the Sixth Amendment to the Constitution mandate a jury trial where a penalty of $25,000.00 ($15,000 suspended) is assessed against a labor organization in a criminal contempt proceeding.

2. Whether petitioners, charged with criminal contempt for an alleged violation of an injunction issued under the National Labor Relations Act, are entitled to a trial by jury under 18 U.S.C. § 3692, which provides that alleged contemnors are entitled to a jury trial in all contempt cases "arising under the

[1]"G.A." refers to the Appendix to the "Memorandum for the Respondent," dated October, 1974. "J.A." refers to the Joint Appendix filed herein. The opinion of the court below is attached as an appendix to the petition for writ of certiorari.

laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute."

IV

STATUTES INVOLVED

United States Constitution, Article III, § 2:

"The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury. . . ."

United States Constitution Amendment VI:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . ."

Title 18, United States Code, Section 3692 provides:

"Jury trial for contempt in labor dispute cases

"In all cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed.

This section shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice nor to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders or process of the court."

V

STATEMENT OF THE CASE

This labor dispute arises out of a strike and picketing by Local 21 of the International Typographical Union (hereinafter Local 21) against the Independent-Journal newspaper (hereinafter I-J). This dispute resulted in two separate district court actions which culminated in the civil and criminal contempt convictions involved herein. Petitioner Local 70 was not a striking union and had no collective bargaining relationship with the I-J.

In early January, 1970, Local 21 went on strike against the I-J a daily newspaper serving the Marin County area north of San Francisco. Picketing by Local 21 began at the premises of the I-J in San Rafael. In late January Local 21 begain picketing in San Franicsco where newsprint from Canada destined for the I-J was being unloaded from barges. Longshoremen members of Local 10 of the International Longshoremen's & Warehousemen's Union respected the picket lines and refused to unload newsprint from the ships to dockside. In addition, members of two Teamster locals—Local 85 of San Francisco and Local 287 of San Jose—similarly refused to cross the picket lines to load and haul the newsprint by truck the 20 miles north to San Rafael.

Unfair labor practice charges were filed with the National Labor Relations Board against the unions involved; the Regional Director of the Twentieth Region (Respondent herein) obtained a temporary restraining order pursuant to 29 U.S.C. § 160(1)

against Local 21's picketing of the dock. The theory of the petition for the temporary restraining order was that an illegal secondary boycott was involved against the companies responsible for transporting the newsprint. Simultaneously, an order to show cause was issued which required Local 21, Local 85 and Local 287 to show cause two days later on February 13 why a preliminary injunction should not issue.[2] The preliminary injunction was issued February 13, 1970, against these three labor organizations[3] only, "enjoining further picketing at the pier and further acts designed to cause the neutral employers to refuse delivery of newsprint." 492 F.2d at 931. Petitioner Local 70 was not named in either the unfair labor practice charge nor named as a party to the injunction and was totally uninvolved in the transaction at the pier.

Subsequently, Local 21 commenced consumer picketing of stores in Marin County which advertised in the I-J. Unfair labor practice charges predicated on further illegal secondary boycotting were filed against Local 21. The Regional Director petitioned the district court in a second action for the issuance of a

---

[2]This was Case No. C-70-306 LHB (N.D. Ca.). For the text of the injunction see J.A. 6-9. The "Petition for Adjudication in Civil Contempt and for Other Relief; and Request for Institution of, Adjudication In, and Punishment for Criminal Contempt" (J.A. 14-36) was filed and docketed under caption, Case No. C-70-895 WTS (N.D. Ca.), which case involved the second temporary injunction issued. The petition claimed violations of both injunctive decrees.

[3]Local 10 of the I.L.W.U. became involved when it was served with the temporary restraining order on the day it was to expire—February 13.

second injunction against Local 21's activity.[4] On April 28, 1970, Local 21 entered into a stipulation with the National Relations Board agreeing to a temporary injunction prohibiting Local 21 from picketing certain named retail stores and "other firms which advertised in the Independent-Journal; where an object of the picketing [was] to cause customers of such firms to cease buying products not advertised in that paper." (J.A. 12-13). Petitioner Local 70 was not named in either the unfair labor practice charge nor named as a party to the injunction nor did it have notice of or participate in the injunction proceedings.

In the middle of October, 1970, further activity in Marin County developed. The court below characterized this conduct as follows:

> "The effort broadened to boycott or quarantine San Rafael and all of Marin County, curtailing deliveries of all supplies, causing traffic tie-ups and attempting to prevent delivery trucks from entering exit ramps from main highways to enter the city." 492 F.2d at 932.

The National Labor Relations Board through the Regional Director filed a petition seeking to hold Locals 21, 85, and 10 and their officers in civil and criminal contempt of both previous injunctions. (J.A. 14-36). The contempt petition claimed that "Respondents embarked upon a joint plan, program and

[4]This is Case No. C-70-895 WTS (N.D. Ca.). For the text of the injunction see J.A. 10-13.

campaign to create a boycott of goods, materials, commodities and services . . ." (J.A. 22).

Local 21's efforts to block deliveries in Marin County affected members of Local 70. Although its jurisdiction is Alameda County, its drivers, in the course of their work, make deliveries in Marin County and elsewhere around the Bay Area. The evidence is overwhelming as to Local 21's campaign to block deliveries and otherwise enforce a secondary boycott. There is also evidence in the record that drivers from many Teamster locals including 70 refused to cross the picket lines or to make deliveries in Marin County during the week and a half preceding the filing of the contempt petition. Local 70's involvement in the boycott scheme was, according to the National Labor Relations Board, reflected by the presence of petitioner James Muniz, the President of Local 70, and business agents of the Local in Marin County during the week and a half in which Local 21 maintained its picket lines.[5]

Swept into the case as accused contemnors were petitioners—James Muniz and Local 70. While neither petitioner was the subject of any unfair labor practice charge nor a party to either injunction proceeding, the Board sought to prove that petitioners had acted in concert and participation with parties to the injunction since neither had been given actual notice of either injunction by personal service or in any other way.

[5]Brief of the National Labor Relations Board to the Ninth Circuit, pp. 20-21.

On October 23, 1970, the contempt trial began before Judge Sweigert,[6] the same judge who signed the stipulated preliminary injunction. All respondents including Petitioners Muniz and Local 70 were charged with both civil and criminal contempt, and moved for a bifurcation of the proceedings. Rather than bifurcate the proceedings according to the procedure suggested in *United States v. United Mine Workers,* 330 U.S. 258, 299 (1947), the court tried the civil and criminal allegations simultaneously.

Petitioners Muniz and Local 70 demanded a jury trial as to the criminal contempt, and argued that Title 18, Section 3692 guaranteed the right of a jury trial in such a labor dispute. In addition, these alleged contemnors argued that they had a constitutional right to a jury trial, relying on this Court's decisions in *Cheff v. Schnackenberg,* 384 U.S. 373 (1966) and *Bloom v. Illinois,* 391 U.S. 194 (1968). The motion for a jury trial was denied by the court. (J.A. 54-55).[7]

After a trial of the alleged contempt which lasted for approximately fifteen days, Judge Sweigert concluded that petitioners had "knowingly and willfully, and with intent to defy, disobeyed, violated, resisted and disregarded [the Court's orders] . . ." (G.A. 40a). Notwithstanding the fact that Local 21 was the prime participant in the labor dispute, the court inflicted the same criminal penalty on each union; a $25,000 fine,

[6]Petitioners Muniz and Local 70 were represented by separate counsel uninvolved in any of the prior proceedings.

[7]After the court imposed substantial fines, these issues were raised in renewed motions and summarily denied. (G.A. 46a-48a).

$15,000 of which was to be remitted at the end of a year (G.A. 43a-44a).[8] As to the individuals, the Court placed them "on probation for one year, subject to the Court's right to shorten or to extend that period. . . ." (G.A. 45a-46a).

This appeal followed.

VI

SUMMARY OF THE ARGUMENTS

A. The Constitutional Issue

"Serious" criminal contempts are subject to the jury trial provisions of Art. III, Section 2 and Amend. VI, United States Const., *Bloom v. Illinois,* 391 U.S. 194 (1968); *Duncan v. Louisiana,* 391 U.S. 145 (1968); *Frank v. United States,* 395 U.S. 147 (1969); *Dyke v. Taylor Implement Mfg. Co.,* 391 U.S. 216 (1968).

Whether or not a crime is "serious" is measured by objective standards, the dividing line between serious and petty offenses for federal courts being governed by Congressional intent as expressed in 18 U.S.C. § 1 (3); *Frank v. United States, supra; Baldwin v. New York,* 399 U.S. 166 (1970); *Codiposti v. Pennsylvania,* ..... U.S. ..... (41 L.Ed.2d 912) (1974); *United*

[8]Prior to imposing sentences the court called for a "pre-sentence" report from the Board which was treated as a probation report. (J.A. 47-52). The Board argued that "the contumacious conduct of respondents [was] of extremely serious nature," and that "the Court can . . . be vindicated by the imposition of substantial fines. . . ." (J.A. 52).

States v. Polk, 438 F.2d 377 (6th Cir. 1971); *North American Coal Corp. v. Local 2262, United Mine Workers of America,* 497 F.2d 459, 467, n.4 (6th Cir. 1974); *In Re Union Nacional de Trabajadores,* 502 F.2d 113 (1st Cir. 1974).

Where a fine, rather than imprisonment, is imposed, the contempt may nevertheless be serious where the amount of fine exceeds the $500 limitation set forth in 18 U.S.C. § 1(3). *United States v. Polk, supra; North American Coal Corp. v. Local 2262, United Mine Workers of America, supra; In Re Union Nacional de Trabajadores, supra.*

Since the amount of fine imposed upon petitioner exceeds the $500 limitation for summary proceedings in contempt, petitioner is entitled to a jury trial. Article III, Section 2; Amend. VI, U.S. Const.

B. The Statutory Issue

Petitioners, in addition to the constitutional issue, rely upon the unambiguous language of § 3692 for a convincing basis for their entitlement to a jury trial in this case. There is no lack of clarity or uncertainty in this section which requires this Court to consider legislative materials. Similarly, there are no conflicting statutes which require accommodation.

The First Circuit, in *In Re Union Nacional de Trabajadores,* 502 F.2d 113, read the statute in its natural meaning and found no persuasive reason to create any limitation on the meaning or intent of the statute. To a large extent, petitioners rely on the well-fashioned opinion of Chief Judge Coffin.

However, a review of the process of codification of § 3692 in 1948 does reveal significant circumstantial and direct evidence that Congress intended § 3692 to have a very encompassing meaning. See Part XIII.

Similarly, neither sections 10(h) or 10(l), 29 U.S.C. §§ 160(h) or (l), of the Labor-Management Relations Act broadens the criminal contempt power of courts so as to require any accommodation with § 3692. See Parts XI and XII.

The broad reading of § 3692 is consistent with the principles the statute embraces and the labor relations policy expressed in the Labor Management Relations Act and the Norris-LaGuardia Act.

THE CONSTITUTIONAL ISSUE

VII

TRIAL BY JURY IS REQUIRED WHERE A CRIMINAL CONTEMNOR IS FINED $10,000 FOR INDIRECT CONTEMPT BY WILLFULLY DISOBEYING A COURT ORDER.[9]

Introduction

From *Green v. United States,* 356 U.S. 165 (1958) to *Codiposti v. Pennsylvania,* 41 L.Ed.2d 912 (1974), and *Taylor v. Hayes,* 41 L.Ed.2d 897 (1974), this Court has agonized over when, if at all, trial by jury may be had by alleged criminal contemnors. See

[9]Petitioner Muniz, having been placed on probation with neither fine nor imprisonment imposed, does not raise this jury trial issue as a constitutional issue—but is entitled to a jury trial under § 3692. See, *Frank v. United States,* 395 U.S. 147 (1969).

United States v. Barnett, 376 U.S. 681 (1964); *Cheff v. Schnackenberg,* 384 U.S. 373 (1966); *Shillitani v. United States,* 384 U.S. 364 (1966); *Bloom v. Illinois,* 391 U.S. 194 (1968); *Dyke v. Taylor Implement Mfg. Co.,* 391 U.S. 216 (1968); and *Frank v. United States, supra.*

The evolution of entitlement to trial by jury for certain criminal contempts has been guided and determined in part by resolution of the question as to when a jury trial is required in criminal cases not involving contempt. *Duncan v. Louisiana,* 391 U.S. 145 (1968); *Baldwin v. New York,* 399 U.S. 66 (1970).

Insofar as they are relevant to this case, the applicable rules may be summarized as follows:

(a) When the purpose of a contempt conviction is to punish for past conduct, the contempt is criminal. *Shillitani,* at 368;

(b) Serious contempts are so similar to other serious crimes that they are subject to jury trial provisions just like other serious crimes. *Bloom,* at 201-202.

(c) Whether or not a crime or criminal contempt is serious or petty depends upon objective standards, the most relevant of which is how society views the offense as evidenced by the penalty authorized by law. *Frank,* at 148-149.

(d) Where no legislative penalty is specified, seriousness (or pettiness) is judged by the penalty actually imposed. *Frank,* at 149; *Bloom,* at 211; *Dyke,* at 220.

(e) The dividing line between serious and petty offenses for federal courts is governed by Congressional intent, as expressed in 18 U.S.C. § 1(3).[10] *Frank,* at 150 fn.3; *Baldwin,* at 70-71; *Codiposti,* at 919; *Cheff,* at 379-380. See also, Anno: *Distinction Between "Petty" and "Serious" Offenses for Purposes of Federal Constitutional Right to Trial by Jury*— Supreme Court Cases, 26 L.Ed.2d 916 (1970).

None of the cases thus far referred to expressly involve or deal with jury entitlement where a fine alone, rather than imprisonment, is the sentence imposed. Nor do such cases expressly concern imposition of a sentence upon an organization such as Local 70.

The Sixth Circuit, in *United States v. Polk,* 438 F.2d 377 (1971)[11] held that a fine of $5,000 imposed upon a corporate defendant entitled such defendant to a jury trial because the fine exceeded the $500 line drawn by 18 U.S.C. § 1. *Polk* was considered to be "well reasoned" by the First Circuit in *In Re Puerto Rico Newspaper Guild Local 225,* 476 F.2d 856, 858 (1973). But, the First Circuit declined to consider the merit of *Polk's* holding, inasmuch as the case before it involved $500 fines for separate violations which, only when aggregated, exceeded the

[10] "[N]otwithstanding any Act of Congress to the contrary . . . [any] misdemeanor, the penalty for which does not exceed imprisonment for a period of six months or a fine of not more than $500, or both, is a petty offense."

[11] See, also, *North American Coal Corp. v. Local 2262, United Mine Workers of America,* 497 F.2d 459, 467, n.4 (6th Cir. 1974).

limits of 18 U.S.C. § 1(3).[12] The Court of Appeals below, without much discussion, refused to follow *Polk,* 492 F.2d 929, 937, n.8.[13]

A. Jury Trial Is Required Whether A Sentence is By Fine or By Imprisonment.

Neither Article III, § 2 nor Amend. VI[14] distinguish between crimes or criminal punishment based upon imprisonment or fine. Petitioners concede that at first blush, there is a certain emotional appeal for refusing to equate a fine with a sentence imposing imprisonment. See opinion below, 492 F.2d 929 at 937, n.9. But there is no reason in history or in law to

[12]The First Circuit, however, in *In Re Union Nacional de Trabajadores,* 502 F.2d 113 (1st Cir. 1974), construed the *Puerto Rico Newspaper Guild* case as requiring a jury trial when a fine for a single offense exceeds $500.00. 502 F.2d 113 at 116. *Codiposti* and *Taylor* were decided after decision in *Puerto Rico Newspaper Guild,* and would require a different result in it than was reached.

[13]Other cases in which the issue involved here is discussed were either decided before *Bloom;* e.g., *In Re Holland Furnace Co.,* 341 F.2d 548 (7th Cir. 1965), *cert. denied,* 381 U.S. 924 (1965), or before *Baldwin;* see, e.g., *Rankin v. Shanker,* 23 N.Y.2d 111 (242 N.E.2d 802, 1968, *stay denied,* 393 U.S. 930, 1968). Still other cases have rejected *Polk;* e.g., *McGowan v. State,* 258 So.2d 801 (Miss., 1972), *cert. denied,* 409 U.S. 1006 (1972), in which the Court merely said without discussion that an organization can be treated differently than an individual for purposes of entitlement to jury trial; and *In Re Fair Lawn Educ. Ass'n,* 63 N.J. 112, 305 A.2d 72, *cert. denied,* 414 U.S. 855 (1973), in which reliance was placed upon local statutory safeguards to justify denial of jury trial. These included a hearing before a judge other than the one whose order was violated, and requiring clearly defined and separate criminal contempt proceedings from civil contempt proceedings.

[14]"The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury . . ." Art. III § 2, U.S. Const.

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . ." Amend. VI, U.S. Const.

support any such distinction for purposes of jury entitlement.

Fines have been used throughout history as an alternate or supplemental method of punishment for crime, without regard for the seriousness or pettiness of offense. See Rubin: *The Law of Criminal Correction,* Chap. 7 (West Pub. Co., 1963). Rubin traces the practice of fines to the common law and the antecedent medieval Anglo-Saxon law, which included *"wergeld,"* the payment of a specific sum by one who caused the death of another; *"bot,"* compensation paid to a victime of crime; and *"deodond,"* the forfeiture of articles which were the instruments causing injury or loss; and fines were used as serious punishment in other criminal law systems such as the *multa* in Roman law, the *amende* in French law, and the *geldestrope* in German law. *Id.,* n.9 at 522. The use of fines in serious cases led to such abuses of governmental power that a prohibition against "excessive fines" was incorporated in the English Bill of Rights of 1688, and later in Amend. VIII. *Id.* at 223, 1 Stephen, *History of the Criminal Law of England* 57 (1883).

In the United States, fines have been imposed for both serious and less serious offenses, especially where the offending party is an organizational entity. See Seagle, Fines, 6 Encyc. Soc. Sci. 249, 250 (1931). In *United States v. United Mine Workers of America,* 330 U.S. 258 (1946), a heavy, albeit reduced, fine was explained to be justified in order to emphasize the gravity of a union's disobedience to a court order.

Utilization of fines against organizations, which by their nature cannot be jailed, or against individuals[15] hardly means that a fine is not serious, or that the offense for which it is imposed must be, because of its imposition, a petty one.

Denial of trial by jury for petty offenses has nothing to do with whether or not a jail sentence or fine, or both, are imposed. Instead, jury trials are denied for petty offenses because *historically,* a criminal offense deemed to be petty was not tried by jury. *Duncan,* at 159; Frankfurter and Corcoran, *Petty Federal Offenses and the Constitutional Guarantee of Trial By Jury,* 39 Harv. L. Rev. 917 (1926).

The fact that imprisonment *is* imposed is not determinative of the question as to when an offense is serious or petty. Imprisonment for six months or less is imprisonment just the same. But an offense for which a sentence of six months or less is imposed is deemed to be petty for jury trial purposes because of the need to balance rights of accused with the desirability of convenient and early disposition of criminal cases. *Baldwin,* at 73. Petitioner does not doubt that an early and convenient disposition of injunctive relief, such as was sought by respondent, is desirable. Such a need is fully met by utilization

[15]While an individual may not be imprisoned for failure to pay a fine solely because of indigency, imprisonment for failure to pay a fine imposed is not constitutionally prohibited. *Tate v. Short,* 401 U.S. 395 (1971); *Williams v. Illinois,* 399 U.S. 235 (1970); *Morris v. Schoonfield,* 399 U.S. 508 (1970).

of civil contempt proceedings,[16] which do not require jury trial. When, however, criminal sanctions are imposed, there is no more need to weight the scales of convenience against an accused merely because the sentence is a fine, rather than imprisonment.

This Court has recognized that a fine upon a union for criminal contempt can be serious. *Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers, Local 70,* 415 U.S. 423, 448 (1974). Here, petitioner, already subject to civil penalties of $21,000, is faced with additional criminal sanctions of at least $10,000.

The reason for having jury trials in serious offenses is just as applicable where a sentence is a fine as when a sentence is imprisonment; i.e., to "prevent oppression by the Government." *Duncan* at 155. In cases of criminal contempt, potential and actual judicial abuses are the same, whether or not a fine or imprisonment is the sentence decreed. *Bloom,* 206-209. The danger for abuse and misuse of contempt power is even greater where, as here, the order of contempt was sought by an arm of government, the N.L.R.B., and the trial was heard by the same judge who signed the order. It is not surprising that in recent years, the conviction rate for violation of N.L.R.B.-sought injunctions has jumped to 91%. Bartosic and Lanoff,

[16]*Shillitani* teaches that a judge always should utilize civil contempt power to obtain and coerce obedience to judicial orders. Criminal sanctions should be resorted to only in the most serious situations. 384 U.S. 364, 371, n. 9.

Escalating the Struggle Against Taft-Hartley Contemnors, 39 U. Chi. L. Rev. 255, 258 (1972).[17]

Requiring jury trials in criminal contempt cases where serious fines are imposed does not deprive courts of their power to convict or to sentence for criminal violations of court orders. It merely requires that before a serious fine can be levied, jury trial on the criminal charge must be had.

B. The Objective Standard of 18 U.S.C. § 1(3) Governs As To Whether or Not A Crime Is Serious For Purposes of Jury Trial.

This Court has remained resolute in its commitment "to the proposition that 'criminal contempt is not a crime of the sort that requires the right to jury trial regardless of the penalty involved.'" *Taylor,* at 906. Similarly, the Court has been resolute in drawing the line between serious and petty offenses for purposes of jury entitlement, on the basis of society's view of the offense as evidenced by the degree of punishment imposed. *Cheff,* at 379; *Bloom,* at 211, *Dyke,* at 219; *Baldwin,* at 68; and *Taylor,* at 906.

Earlier cases took into consideration the nature of offense. *Callan v. Wilson,* 127 U.S. 540 (1888); *District of Columbia v. Colts,* 282 U.S. 63 (1930); and earlier cases considered also the actual penalty imposed as being the most relevant gauge to society's view, when the offense itself was not considered to

[17]More frequently than not, a sentence is determined, "not by the nature of the offender, or the offense, but by the nature of the sentencing judge." Gaylin, *Partial Justice, A Study of Bias in Sentencing* (Alfred A. Knopf, 1974). See, also, *Bloom* at 202, n.4.

be inherently evil. *Schick v. United States,* 195 U.S. 65 (1904); *District of Columbia v. Clawans,* 300 U.S. 617 (1937).

Clawans' "counsel" (see *Duncan,* at 161) to seek "objective" criteria has led this Court to draw the line between serious and petty offenses by referring to existing "laws and practices" in the nation. *Baldwin,* 399 U.S. 66, 70. Thus, 18 U.S.C. § 1(3) has become the dividing line for federal offenses (*Cheff,* at 379; *Frank,* at 219), and its provisions have emerged as the dividing line for requiring jury trials in state cases. *Baldwin,* at 68; *Codiposti,* at 919, n.4.

"Objective" criteria must be sought in deciding whether an offense is petty or serious. *Baldwin,* at p. 68; *Frank,* at p. 152. The dollar amount contained in 18 U.S.C. § 1(3) is just as relevant for purposes of fines as it is for imprisonment.[18] It reflects society's view of what is petty and what is serious, as determined by society's legislative representatives.[19]

[18]There is nothing in the history of 18 U.S.C. § 1(3) which justifies any distinction between fines and imprisonment for purposes of determining whether a crime is serious or petty. See, H. R. Report No. 304, pp. A2-A4 80th Cong., 1st Sess., 1947.

[19]Most states which have imposed monetary limitations upon allowable fines for contempt have restricted the amount to $500 or less. Only three states specifically authorize fines up to $1,000, and the remaining states impose no limitations upon either the extent of fines or imprisonment. 8 Wm. & Mary L. Rev. 76, 90-100, Appendix. See, also, *Bloom* at 206, n.8.

It is interesting to note, too, that when Congress adopted contempt provisions in the Civil Rights Act of 1957, 42 U.S.C. § 1971(e), 1975(g), jury trial was granted where a fine imposed exceeded $300. 42 U.S.C. § 1995. See, also, *Bloom,* at 204, n.6.

The National Commission on Reform of Federal Criminal Laws: Study Draft of a New Federal Criminal Code (U.S. Govt. Printing Office, 1970) classifies contempt by disobedience of a court order

There is considerable wisdom in utilizing 18 U.S.C. § 1(3) as the dividing line for serious and petty fines. It provides courts and those accused of crime with certainty as to when a jury is required, and it avoids a hodge-podge of absurd results which may be brought about by varying extrinsic factors such as inflation, high employment, unemployment, personal or organizational wealth or lack of wealth at any given point in time (a factor which will vary for an endless number of reasons).

Subjective considerations may make sense in deciding whether or not a fine imposed is constitutionally "excessive." Amend. VIII, U.S. Const.; *United States v. United Mine Workers, supra.* But these considerations, deemed valid under the Eighth Amendment, do not meet the requirement of *objective standards* for purposes of Art. III, § 2 and Amend. VI.[20] *Baldwin; Frank; Polk, supra,* at 380.

---

as a Class A misdemeanor, subject to unlimited fine or imprisonment. § 1341(2). However, the Commission does not take a fixed position on the length of sentence. Instead, it suggests terms of three, six or twelve months as possible limits, and it notes that twelve months may be more desirable. § 3204 and *Comment* thereto.

[20]The Constitutional provisions for jury trial impose the requirement without regard for the entity status of the criminally accused. The right to jury trial is attached, not to the accused, but to "trial of all crimes" and "in all criminal prosecutions." Petitioner, being subject to criminal prosecution (see, e.g., *Standard Oil Co. v. United States,* 221 U.S. 1 (1910)), can claim the same entitlement to jury trial as may a human defendant charged with crime. See also, *The National Commission on Reform of Federal Criminal Laws, supra,* §§ 402-405, working papers, pp. 167 *et seq.*

THE STATUTORY ISSUE

VIII

A SUMMARY OF THE STATUTORY FRAMEWORK

In 1932, Congress passed the Norris-LaGuardia Act, 29 U.S.C. § 101, 47 Stat. 70, which restricted the powers of the district courts to issue and enforce injunctions arising out of labor disputes. Section 4 of that Act, 29 U.S.C. § 104, forbade the issuance of any injunction whatsoever interfering with nine types of specified activity engaged in by workers or their organizations. Sections 7-10 imposed severe procedural and substantive limits on the injunctive process when applied in residual circumstances not absolutely proscribed in § 4.

Section 11, the predecessor of 18 U.S.C. § 3692, with which this case is concerned, provided for a jury trial in contempts of injunctions issued pursuant to §§ 7 through 10.

Norris-LaGuardia governed all injunctive decrees issued by the courts in labor disputes. In 1934, Congress attempted to create additional protection for workers in the National Labor Relations Act, 29 U.S.C. § 151, 49 Stat. 449. In §§ 10(e)-(h) of that law, courts of appeals were granted jurisdiction to enforce National Labor Relations Board orders against employers only. Nowhere were the courts given any power to issue any injunctions against unions, and therefore, there was no retreat from the principles enunciated so clearly in the Norris-LaGuardia Act.

In 1947, Congress substantially revised the Wagner Act with the Taft-Hartley amendments, the Labor Management Relations Act of 1947, 61 Stat. 136, *as amended*. This revision created new unfair labor practices chargeable against unions, and gave jurisdiction to the district courts to temporarily enjoin those unfair labor practices (including unfair labor practices against employers). For the first time in fifteen years, limited inroads in the Norris-LaGuardia principles were effected: courts were given jurisdiction to issue injunctions in labor disputes. 29 U.S.C. §§ 10(j) and (l). The power of the courts of appeals to enforce Board orders was continued, 29 U.S.C. §§ 10(e)-10(h), as before.

One year later, in 1948, the entire federal criminal law was recodified and revised into Title 18, "Crimes and Criminal Procedures," 62 Stat. 683.

At this time, § 11 of Norris-LaGuardia was repealed, and a new section was added to Title 18, § 3692, guaranteeing a jury trial "[i]n all cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute."

The interplay of § 11 of Norris-LaGuardia with its revision into § 3692 of Title 18, and two sections of the Taft-Hartley amendments, 29 U.S.C. §§ 160(h) and (l), is the issue before this Court.[21]

[21]For a general discussion of the practical and legal framework surrounding contempt of these Board-obtained injunctions, see Bartosic & Lanoff, *Escalating the Struggle Against Taft-Hartley Contemnors*, 39 U. Chi. L. Rev. 255 (1972). Each year, the Board reviews its contempt litigation in its annual report; e.g., "Thirty-Ninth Annual Report of the National Labor Relations Board for the Fiscal Year Ended June 30, 1974," 170-72 (N.L.R.B., 1974).

IX

SECTION 3692 IS UNAMBIGUOUS ON ITS FACE, AND MUST BE CONSTRUED IN FAVOR OF THE RIGHT IT GRANTS

A. Under a number of provisions of law, Congress has provided an absolute statutory right to a jury trial for federal criminal defendants.[22] This Court has not only given constitutional sanction to this authority,[23] but it has continually emphasized the validity of these statutory requirements.[24]

Section 3692, under which petitioners assert the right to a jury trial, is part of the Federal Criminal Code, which not only defines federal crimes, but also grants procedural protections to those accused in federal courts. Where rights of defendants are involved in criminal proceedings, this Court has evolved special tools and concepts for statutory construction.[25] In construing another section of Title 18, "Crimes and Criminal Procedure," in favor of the accused, this Court remarked: "that the interest of the United States in a criminal prosecution '. . . is not that it

[22]See e.g., 42 U.S.C. § 1973(l)a; 42 U.S.C. § 1995; 42 U.S.C. § 2000(h); F.R.Crim.P. 42; 18 U.S.C. § 402; 29 U.S.C. § 528 and 18 U.S.C. § 3691. Part VII of this brief raises the constitutional issues inherent in the right to a jury trial.

[23]*Michaelson v. United States*, 266 U.S. 42 (1924).

[24]*Green v. United States*, 356 U.S. 165, 187, n.19 (1958); *Bloom v. Illinois*, 391 U.S. 194, 204, n.6 (1968); and *Frank v. United States*, 395 U.S. 147, 149, n.1 (1969). In each case, within the footnote indicated, this Court noted the impact of § 3692.

[25]In the proceedings in the district court, criminal rights were afforded the accused except that right asserted herein. See F.R. Crim.P. 42.

shall win a case, but that justice shall be done . . . .'" *Campbell v. United States,* 365 U.S. 85, 96 (1961).[26]

In this case, the literal meaning of the statute would grant James Muniz and Local 70 a jury trial. Of that, there should be no question. In an analogous case, this Court interpreted the breadth of F.R. Crim.P. 7(a), relating to the requirement that a prosecution proceed with an indictment, *Smith v. United States,* 360 U.S. 1, 9 (1959). When this Court was asked to "construe the provisions of the Rule loosely," it refused, "in view of the traditional canon of construction which calls for the strict interpretation of criminal statutes and rules in favor of the defendant where substantial rights are involved." *Id.* When asked to place a gloss on another section of the same Federal Criminal Code, the Court balked, "when a statute is designed to incorporate fundamental values . . ." *Sabbath v. United States,* 391 U.S. 585, 589 (1968). Only where the literal meaning of a statute produces "extraordinary results" does this Court consider whether extraneous sources, such as legislative history, require a gloss. *N.L.R.B. v. Allis-Chalmers Mfg. Co.,* 388 U.S. 175, 184 (1967). See also, *Banks v. Grain Trimmers Ass'n.,* 390 U.S. 459, 465 (1968). There is simply no need for extraneous or independent information, because a proper result is mandated by § 3692.

Fifty years ago, this Court considered a predecessor to 18 U.S.C. § 3691, which guaranteed a right to jury trial in specified circumstances. This Court refused

[26]Cf. F.R.Crim.P. 2.

to limit the plain meaning of that statute, and criticized the lower court's exercise in judicial legislation:

> "To say that railroad employees are outside the provisions of the statute is not to construe the statute, but to engraft upon it an exception not warranted by its terms. If Congress had intended such an exception, it is fair to suppose that it would have said so affirmatively. The words of the act are plain, and in terms inclusive of all classes of employment; and we find nothing in them which requires a resort to judicial construction. The reasoning of the court below really does not present a question of statutory construction, but rather an argument justifying the suppositious exception on the ground of necessity or of policy—a matter addressed to the legislative and not the judicial authority." *Michaelson v. United States, supra,* 266 U.S. at 68.

In the context of a criminal statute guaranteeing a fundamental right, the natural meaning of ordinary words cannot be ignored. There is no persuasive reason to impose any narrow meaning on § 3692.

B. Each and every element of § 3692 is present herein:

(1) Petitioners were charged with criminal contempt.

(2) A law "of the United States governing the issuance of injunctions or restraining orders" was the statutory basis for the district court's jurisdiction. 29 U.S.C. § 160(l).[27]

[27]References to subsections of 29 U.S.C. § 160 will be referred to to by the internal numbering system of the section. Thus, § 160(l) is § 10(l).

(3) This is a case growing out of a labor dispute.[28]

(4) The alleged contempt was not committed in the immediate presence of the court, nor did it concern the disobedience of any officer of the court.

The court below placed a restrictive gloss on § 3692, which effected a denial of this jury trial provision. Although the opinion does not completely reflect all the arguments made in favor of that interpretation, petitioners will consider those arguments advanced by the Board in the court below to support this restrictive reading.[29]

X

PETITIONERS WERE CHARGED WITH CONTEMPT ARISING OUT OF A LABOR DISPUTE WITHIN THE MEANING OF § 3692

The dispute out of which Local 70 and James Muniz were charged with contempt involved a strike at the Independent-Journal and subsequent alleged secondary boycott involving both consumers and delivery drivers. The phrase "labor dispute" is common to federal regulatory statutes. See 29 U.S.C. §§ 152 (a), 164(c); 113(a), (b), and (c); and 29 U.S.C.

[28]The Board's assertion to the contrary is dealt with in Part X, *infra*.

[29]The arguments are contained in the brief of the Board to the Ninth Circuit, pp. 59-64. The First Circuit addressed these issues in *In Re Union Nacional de Trabajadores*, 502 F.2d 113 (1974). The opinion of the First Circuit is printed as an appendix to petitioners' supplemental brief to the petition for writ of certiorari, dated August 21, 1974.

§ 402(g). Any controversy over the terms and conditions of employment, "whether the disputants stand in the proximate relation of employer and employee" are labor disputes within the meaning of the Labor Management Relations Act. 29 U.S.C. § 159(9). Secondary boycotts are labor disputes. *Lauf v. E. G. Shinner & Co.*, 303 U.S. 323, 329 (1938); and *New Negro Alliance v. Sanitary Grocery Co.*, 303 U.S. 552, 559-61 (1938). Norris-LaGuardia and Taft-Hartley have the same definition of a labor dispute. Cf. 29 U.S.C. §§ 152(9) and 113(c). The drafters of the definition in the 1935 Wagner Act stated that the language was lifted directly from that used in Norris-LaGuardia.[30] The same definition was continued by the 1947 amendments.[31] See 29 U.S.C. § 151 (industrial disputes). The National Labor Relations Board itself has recognized that the definition of a labor dispute used in the National Labor Relations Act is "substantially the same" as used in Norris-LaGuardia. *Tanner Motor Livery, Ltd.*, 148 N.L.R.B. 1402, 1403 (1964); and *N.L.R.B. v. Washington Aluminum Co.*, 370 U.S. 9, 15 (1962).

Of course, the term "labor dispute" is not strained to cover every controversy involving workers and their employers. For that reason, the courts have not applied § 3692 to contempts arising out of injunctions issued according to the authority of the Fair Labor Standards Act. 29 U.S.C. § 201-19, 52 Stat.

[30]I, *Legislative History of the National Labor Relations Act, 1935*, at 1348 (N.L.R.B., 1949).

[31]I, *Legislative History of the Labor Management Relations Act, 1947*, at 538 (N.L.R.B., 1948).

1060, *Mitchell v. Barbee Lumber Co.*, 35 F.R.D. 544, 547 (S.D. Miss. 1964); or violations of orders to specifically perform a collective bargaining agreement according to an arbitration award, *Philadelphia Marine Trade Ass'n v. Internat'l Longshoremen's Ass'n, Local 1291,* 368 F.2d 932, 934 (3d Cir. 1966), *rev'd on other grounds,* 389 U.S. 64 (1967).[32]

Notwithstanding the well-established meaning of labor dispute, the Board argued below that since an unfair labor practice was charged, no labor dispute was in fact involved withing the meaning of § 3692.[33] The court below seems to have reached the same conclusion, in stating that this case arose as part of "the

[32]Because of subsequent history, this case is perplexing. The case stands chronologically between *Sinclair Refining Co. v. Atkinson,* 370 U.S. 195 (1962), and *The Boys Markets, Inc. v. Retail Clerks Union, Local 770,* 398 U.S. 235 (1970). The district court which issued the injunction presumed it could only do so if it could find that the dispute was outside the prohibitions of § 4 of Norris-LaGuardia. When the case reached this Court, it refused to reach the issue which it faced later in *The Boys Markets, Inc.* case. 398 U.S. at 73. The injunction against the strike pending further arbitration would now be permissible. The issue posed in Part XIV C, *infra,* is thus joined.

[33]See N.L.R.B. brief before the Ninth Circuit, pp. 61-63. The Board's position is inconsistent. As will be discussed subsequently, see Part XIII, *infra,* the Board claims that § 3692 has the same meaning as old § 11, 29 U.S.C. § 111, 47 Stat. 72, of the Norris-LaGuardia Act (and thus including only contempts arising out of injunctions issued under that Act). The Board at the same time has denied that "labor dispute" applies to the activity alleged herein. The inconsistency is that the definition of "labor dispute" contained in both the Norris-LaGuardia Act and the Taft-Hartley Act are exactly the same. On the one hand, the Board claims that § 3692 is derived from and limited to § 11 of the Norris-LaGuardia Act. On the other hand, the Board claims that the term "labor dispute" contained therein is not the same as that contained in Norris-LaGuardia. See *Mitchell v. Barbee Lumber Co., supra,* 35 F.R.D. at 546 (definition of labor disputes in § 3692 same as in Norris-LaGuardia).

administrative scheme of the Labor Management Relations Act and its amendments." 492 F.2d at 934. The gloss placed upon the term "labor dispute" to exclude labor disputes where unfair labor practices are committed is contrary to the plain meaning of this term.[34]

The short of the matter is that the term "labor dispute" is common to Federal statutes involving labor relations, and concerns the kind of alleged boycotting and strike activity involved herein.

XI

SECTION 10(h) DOES NOT EXEMPT 10(l) INJUNCTIONS FROM THE PROVISIONS OF SECTION 3692

Nowhere does § 10(h), 29 U.S.C. § 160(h)[35] exclude injunctions issued under the authority of § 10(l) from

[34]Chief Judge Coffin, writing for the First Circuit, noted the ultimate contradiction in the Board's position:

> "That the language of § 3692 would facially apply to many NLRA injunction situations, such as this one, is borne out by the source of the language itself, apparently section 1 of the Norris-LaGuardia Act, 29 U.S.C. § 101. That section applies to cases 'involving or growing out of a labor dispute.' If that language did not apply to at least some NLRA situations, there would be no reason for Congress to include a provision stating that section 1 did not apply to certain parts of the NLRA. Yet of course Congress did include such a provision in section 10(h) of the NLRA, 29 U.S.C. § 160(h), which specifically exempted the jurisdiction of courts 'sitting in equity' under section 10 of the NLRA, 29 U.S.C. § 160, from the limitations of Norris-LaGuardia." *In Re Union Nacional de Trabajadores,* 502 F.2d at 118.

[35]Section 10(h) reads in its entirety:

> When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (U.S.C., Supp. VII, title 29, secs. 101-115).

the provisions of Norris-LaGuardia or § 3692. The Board's argument[36] to the contrary requires that three consecutive inferences be drawn: (1) Because § 10(h) applies to "temporary relief or a restraining order" this includes the "injunctive relief" obtained pursuant to § 10(l); (2) the language of § 10(h) applies to except from all the provisions of Norris-LaGuardia those injunctions obtained pursuant to § 10(l); including, in particular the § 11 right to a jury trial; (3) The § 3692 right is a mere continuation of § 11 of Norris-LaGuardia. None of these inferences can properly be drawn. That the history of § 10(h) establishes that its provisions have absolutely nothing to do with the type of injunction obtained herein pursuant to § 10(l)[37] is discussed in Part A, *infra*. Secondly, that the language of § 10(h) indicates that it serves no greater purpose than a naked grant of jurisdiction to the courts of appeal is considered in Part B, *infra*. The third inference is the subject of Part XIII, *infra*.

A. The Board's authority to obtain injunctive relief to prohibit certain unfair labor practices in the district courts is grounded solely on § 10(l) itself; §10(h) applies only to the enforcement of Board orders in the courts of appeal.[38] A brief outline of the

[36]See NLRB brief before the Ninth Circuit, p. 60.

[37]See, generally, "The Labor Management Relations Act and the Revival of the Labor Injunction," 48 Col. L. Rev. 759, 760-62 (1948).

[38]Although the opinion of the Ninth Circuit mentions only § 10(l), the Board urged the impact of § 10(h) in its brief to that court, p. 60. Other courts, without discussion, have errone-

statutory scheme will illustrate this. The administrative-adjudicative scheme envisions Board investigation of charges filed by an interested party. § 10(b). A Board hearing is held, and if the charges are proven, the Board issues an appropriate order. § 10(c). If the order is disregarded by the person found to have committed the unfair labor practice, the Board is empowered to seek temporary[39] or permanent injunctive relief in the courts of appeal, which possess the statutory enforcement function. § 10(e). As an administrative agency the Board lacks any power to enforce its orders except through these procedures.

§ 10(e) and similarly § 10(f) permit the court of appeals to enforce a Board order, and where necessary "to grant such temporary relief or restraining order as it deems just and proper." § 10(h) *in haec verba* grants the courts of appeal jurisdiction, notwithstanding the provisions of Norris-LaGuardia. The conjunction of identical language in §§ 10(e), 10(f), and 10(h) strongly implies that § 10(h) applies only to those enforcement orders sought in the courts

ously assumed that § 10(h) applies to § 10(l). *E.g., Lebaron v. Printing Specialties & Paper Converters Union, Local 388*, 75 F.Supp. 678, 681 (S.D. Ca. 1948), *aff'd*, 171 F.2d 331 (9th Cir. 1948); *Madden v. Grain Elevator, Flour & Feed Mill Workers, etc.*, 334 F.2d 1014, 1020 (7th Cir. 1964), and *Penello v. I.L.A., Local 1248*, 78 L.R.R.M. 2009, 2013 (E.D. Va. 1971), *aff'd as modified*, 455 F.2d 942 (4th Cir. 1971). See also *In Re Union Nacional de Trabajadores, supra*, 502 F.2d at 119-20.

[39]Such temporary restraining orders are not uncommon to the courts of appeal. See, *e.g., N.L.R.B. v. Hospital & Institutional Workers, Local 250*, 78 L.R.R.M. 2095 (9th Cir. 1971); and *Sears, Roebuck & Co. v. Carpet, Linoleum, etc., Local Union No. 419*, 397 U.S. 655, 658-59 (1970).

of appeal. However, no temporary or permanent relief is contemplated or authorized until the procedures outlined in §§ 10(b) through 10(d) have been exhausted. This is in deliberate contrast to the remedies provided for in § 10(l) (and similarly §10(j)) which are temporary and involve the district courts *prior* to the completion of Board procedures.

Secondly, the original inclusion of § 10(h) in the Wagner Act demonstrates that its purpose was and is limited solely to orders issued pursuant to §§ 10(e) and 10(f). "This provision was carried over from the original Act, and has no effect upon subdivisions (j) and (l), which are new provisions in the amended Act." *Douds v. Local 294, I.B.T.*, 75 F.Supp. 414, 418 (N.D. N.Y. 1947).[40]

When Taft-Hartley was enacted in 1947, Congress granted the Board new authority to seek relief in the district courts in § 10(l). At the same time, it continued almost verbatim §§ 10(e), (f), (g), and (h) of the old Wagner Act. There was no provision whatsoever for injunctive relief prior to 1947 in the district courts against any unfair labor practice. Contrary to § 10(l), no injunctive relief was ever permitted until the Board had found a violation after the hearing process mandated in §§ 10(b) and 10(c). When § 10(h) was enacted in 1935, it could apply only to the enforcement of Board orders sought against unfair labor practices after hearing and adjudication.

[40]*Accord, Jaffee v. Newspaper & Mail Deliverers Union*, 97 F. Supp. 443, 451 (S.D. N.Y. 1951).

When §§ 10(e), (f), (g), and (h) were continued without significant change in the 1947 Taft-Hartley enactments, the purpose and scope of § 10(h) "remained unchanged in the amended act."[41] The debates did not indirectly or directly reflect any attempt to integrate §§ 10(h) and 10(l): they were entirely separate and distinct provisions.[42]

Thirdly, § 10(l) itself has its own independent jurisdictional language:

> "Upon the filing of any such petition, the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper. . . ."

The language and meaning of § 10(h) is superfluous to any authority necessary for § 10(l).[43]

B. The effect of § 10(h) is limited only to the equitable powers and not to the criminal contempt process. The First Circuit recognized that the language of § 10(h) did not affect anything more than the court's "jurisdiction sitting in equity."[44] Embraced

[41]See I, *Legislative History of the Labor Management Relations Act, 1947* at 334 and 433.

[42]In H.R. 3020 (introduced by Mr. Hartley), § 10(h) was retained, § 10(l) was not even proposed. Only the Senate version, S. 1126, contained both provisions. The fact that § 10(h) was included without § 10(l) in the House version indicates the total independence of the section. *Id.* at 73-74 and 129-32.

[43]The reason why § 10(h) does not refer only to courts of appeal sitting "in equity" is because the district courts could also enter enforcement orders on the rare occasion when the courts of appeal were on vacation. This limited provision continues to exist in § 10(e).

[44]An extension of this was suggested by Campbell, J., dissenting in *In Re Union Nacional de Trabajadores*, 502 F.2d at 121-22. § 10(h) excludes its provisions from the application of Nor-

within the meaning of § 10(h) is only "granting appropriate temporary relief or a restraining order, or making and entering the decree enforcing, modifying, and enforcing as so modified . . . the jurisdiction of courts sitting in equity shall not be limited by the [Norris-LaGuardia Act] . . ." Nothing more is contained in that section. Focusing on the word "equity" found in § 10(h), the First Circuit noted:

> "We find it difficult to think of a court sitting to mete out punishment for past offenses as a court 'sitting in equity.' Criminal contempt proceedings can arise from proceedings begun in either law or equity. While 'contempt' generically may 'sound in' equity, a criminal contempt proceeding really stems from the inherent power of a court, not merely a chancellor, to vindicate its authority. It is sui generis. *United States v. Barnett,* 346 F.2d 99 (5th Cir. 1965)." 502 F.2d at 120. See, also, *Michaelson v. United States, supra,* 266 U.S. at 64-65.

Section 10(h) does not purport to impose any constraints on the criminal powers of any federal court.

A second independent reason is that § 10(h) itself speaks only in terms of granting jurisdiction: the rules of procedure, the substantive law, and the rights to a jury trial are defined and codified elsewhere. Norris-LaGuardia itself not only spoke in terms of "jurisdiction," but prescribed appeal procedures (§ 10); the standard of proof of agency (§ 6); a

ris-LaGuardia only. Since § 3692 is not part of Norris-LaGuardia, § 10(h) does not purport to exclude the rights granted by § 3692. Such a holding is reasonable in light of the alterations made when § 111 of the Norris-LaGuardia Act was repealed.

duty "to make every reasonable effort to settle"; and the right codified in § 11 to a jury trial. The word "jurisdiction" contained in § 10(h) cannot be broadened beyond the court's power to issue the injunction.[45]

§ 10(h) is simply inapplicable and unrelated to orders obtained under § 10(l). § 10(h) does not operate in any way to remove or imply the removal of any right guaranteed by Norris-LaGuardia to the proceedings involved herein.

XII

SECTION 10(l) DOES NOTHING MORE THAN GRANT JURISDICTION TO THE DISTRICT COURT TO ISSUE TEMPORARY INJUNCTIONS.

Section 10(l) permits the Regional Director of the National Labor Relations Board to seek temporary relief in the district courts pending the conclusion of Board adjudication of certain unfair labor practice allegations involving unions.[46] Within the language of § 10(l), there is explicit grant of authority to the district courts to "have jurisdiction to grant such injunctive relief or temporary restraining order as it deems

[45]Section 10(h) lifts in *haec verba* the language, "the jurisdiction of courts sitting in equity," from the title of Norris-LaGuardia. It is significant that the language "for other purposes" embodied in that title was not included in the language of § 10(h). That section purports only to reach jurisdictional limits imposed by Norris-LaGuardia, not the other restrictions of that Act. See *Bakery Sales Drivers Union v. Wagshal,* 333 U.S. 437, 442 (1948), but see n.38 and n.43 *supra.*

[46]See, "The Labor Management Relations Act and the Revival of the Labor Injunction," *supra.*

just and proper, notwithstanding any other provision of law. . . ."[47]

The Board has seized upon this language to claim that it was the intention of Congress to exempt § 10(l) proceedings from any provision of law, and in particular, those provisions of law which would grant alleged contemnors jury trials.

The First Circuit interpreted similar language in § 10(h) in its clear and narrow sense to relate to jurisdiction only. See *In Re Union Nacional de Trabajadores,* 502 F.2d at 119. The language does not directly or indirectly imply any other provisions of law, including § 3692, would be inapplicable to these injunctions. An acceptance of the Board position would require that every law, both statutory and court made, applicable to the injunctive process, would be rendered

[47]It is worth comparing the language of Section 10(j), which does not employ the "notwithstanding any other provision of law" language:

> The Board shall have power, upon issuance of a complaint as provided in subsection (b) of this section charging that any person has engaged in or is engaging in an unfair labor practice, to petition any United States district court, within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filling of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper.

In Re Union Nacional de Trabajadores was a case arising under § 10(j), not § 10(l). The court did not discuss the jurisdictional grant language in § 10(j). Any distinction between § 10(j) and § 10(l) would seem improper, in view of the closely parallel provisions and purposes.

nugatory by the "notwithstanding any other provision of law" phrase.[48]

Section 10(l) does nothing more than grant certain powers of injunctive relief to the district courts, "notwithstanding any other provision of law" in certain narrowly defined labor disputes (those involving secondary boycotts or jurisdictional disputes) where an unfair labor practice charge has been both filed and investigated.[49] The Board places a reliance on six words within § 10(l) for the preposterous proposition that the courts have unlimited power beyond their basic jurisdiction to issue injunctions without regard to other well-established principles.[50] Once the court's

[48]*Query:* Would the "notwithstanding any other provision of law" language exclude the provisions of Fed.R.Civ.P. 65(d) from injunctions issued under § 10(l)? Congress could not have intended such a wholesale repeal of all such laws.

[49]That this phrase grants jurisdiction only to issue injunctions, notwithstanding the Norris-LaGuardia Act, is the precise holding of *Bldg. & Construction Trades Council v. Alpert,* 302 F.2d 594 (1st Cir. 1962). *Accord, Compton v. Teamsters, Local 901,* 49 L.R.R.M. 2835 (D.P.R. 1962) (court may issue *ex parte* temporary restraining order), *temporary injunction granted,* 49 L.R.R.M. 2843 (D.P.R. 1962); *Lebaron v. Printing Specialties & Converters Union, Local 388, supra; Penello v. I.L.A., Local 1248, supra;* and *cf. In Re Union Nacional de Trabajadores,* 502 F.2d at 117, n.3.

[50]That Congress has created limited jurisdictional exceptions to portions of Norris-LaGuardia, while leaving intact other important provisions, is clear in this Court's ruling in *Boys Market, Inc. v. Retail Clerks Union, Local 770, supra,* discussed in Part XIV C, *infra.* When this Court held that § 4 of Norris-LaGuardia was no jurisdictional bar to the issuance of injunctions where a collective bargaining agreement contained grievance-arbitration machinery, it did not imply that other provisions of Norris-LaGuardia were weakened or limited. See *United States Steel Corp. v. United Mine Workers of America,* 456 F.2d 483, 487-89 (3d Cir. 1972); *New York Telephone Co. v. Communication Workers of America,* 445 F.2d 39, 49-50 (2d Cir. 1971); *but see Granny Goose Foods, Inc. v. Brotherhood of Teamsters, Local 70, supra,* 415 U.S. 423, 445, n.19 (1974).

jurisdiction has been established, other recognized principles of law regarding the breadth of injunctions, the process of modifying those injunctions, and their enforcement through contempt are thereafter applicable.[51]

XIII

THE SCOPE OF SECTION 3692 IS NOT RESTRICTED TO CONTEMPTS ARISING OUT OF NORRIS-LAGUARDIA INJUNCTIONS.

A. Section 3692 is unambiguous, and applies to "all cases of contempt . . . involving or growing out of a labor dispute. . . ." Notwithstanding this explicit language, the court below concluded that "[t]here is no reason to believe that Congress intended its grant

[51]The legislative debate surrounding the 1947 enactment of § 10(l) offers no indication that Congress meant that "notwithstanding any provision of law" language to eliminate all the salutary principles of Norris-LaGuardia. Opponents of the amendments recognized that Norris-LaGuardia provisions were weakened by the Taft-Hartley proposals. I & II, *Legislative History of the Labor Management Relations Act, 1947, supra,* 467, 480, 481, 691, 876, 887, 1047, 1455, and 1585-86. Others emphasized that the Board's new injunctive powers would not deprive unions of rights secured by Norris-LaGuardia. *Id.*, at 985, 1057, 1544. Debate often centered on the relationship between other proposals (such as § 303) and Norris-LaGuardia, unrelated to the § 10(l) issue at bar. ***E.g., id.*** at 1375-90 (Aiken amendment). There is one oblique reference to contempt which is totally uninstructive. *Id.* at 1068. The only reference in the entire debates to § 11 of Norris-LaGuardia is contained during the debate on the Ball amendment. That amendment, *inter alia,* would have permitted employers to seek injunctions against secondary boycotts and jurisdictional strikes.

In the debate over these amendments, Senator Ball referred to the provisions of § 11, *Id.* at 1348-49. Although stating "that when the Regional Attorney of the N.L.R.B. seeks an injunction, the Norris-LaGuardia Act is completely suspended. . . .", *id.* at 1348,

of equitable powers to district courts as embodied in section 10(l) of the Act, 29 U.S.C. § 160(l), to be repealed by the recodification of section 11 of the Norris-LaGuardia Act, 29 U.S.C. § 111, into 18 U.S.C. § 3692 [citations omitted]." 492 F.2d at 934[52]

Unfortunately the court below misstated the issue. Section 10(l) does not concern the contempt power of the district court.[53] The issue is rather whether the revision process by which § 3692 evolved out of § 11 was meant to imply that the new code section was restricted in scope to that of its predecessor.

Section 11 of Norris-LaGuardia, on which § 3692 is based, read prior to its repeal:

---

this is dictum; the discussion concerned whether private employers should be able to obtain injunctions against certain strikes and boycotts. Senator Ball's sweeping characterization was meant to demonstrate the contrast between his proposals (which provided "that the Norris-LaGuardia Act shall not apply, with certain exceptions") and what he thought were the less restrained § 10(l) provisions. Senator Ball's attempt at irony (he was a vigorous supporter of greater injunctive power) is an unreliable statement in view of its context, and nowhere else is support found for this proposition in the debate. When Senator Ball noted his proposal left "in effect the provisions of section 11 and 12," no one rose to support or contradict the inference that § 10(l) would in any manner have that effect.

A few minutes later, Senator Ball retreated, and more carefully limited the effect of § 10(l) to "the fact that under the committee bill, the National Labor Relations Board attorney can go into court and obtain an injunction against the secondary boycott or jurisdictional strike, and the Norris-LaGuardia Act is completely suspended. . . ." *Id.* at 1352.

The vigorous opposition and sound defeat of the Ball amendment, *id.* at 1370, demonstrates that Congress wanted to leave intact the Norris-LaGuardia provisions.

[52]Each of the cases relied upon by the Ninth Circuit is distinguishable. None considered the precise question posed herein. See *In Re Union Nacional de Trabajadores, supra,* 502 F.2d at 117.

[53]See Part XII, *supra.*

> In all cases arising under this Act in which a person shall be charged with contempt in a court of the United States (as herein defined), the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed: *Provided,* That this right shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to apply to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders, or process of the court.

In 1948, Congress enacted the Criminal Code, including § 3692, and repealed § 11. 62 Stat. 844, 866. Two significant changes appeared in the new section: (1) the previous restriction to "cases arising under this Act" was deleted; (2) the phrase "laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute" supplants the previous restrictive language.

The legislative history of § 3692 does not support the Board's claim that "the section [3692] was intended after the codification, just as before, to refer only to contempt proceedings under the Norris-LaGuardia Act." Brief of N.L.R.B. in Ninth Circuit, p. 60 (footnote omitted).

B. The events of the prior year, 1947, support the conclusion that the phrase "all labor disputes" is not meant to be restricted. One significant case intercedes in 1947. *United States v. United Mine Workers of*

America, 330 U.S. 258 (1947)[54] In 1946, the United States was in possession of and operated most of the bituminous coal mines in the United States. "[T]he relationship between the government and the workers [was] that of employer and employee." *Id.* at 289. Because the Government was exercising its sovereign power to operate the mines, this Court held that Norris-LaGuardia was inapplicable to the relationship between the Government and these employees. As a corollary, this Court held that no jury trial was mandated by § 11 of Norris-LaGuardia because that provision was "not operative . . ., for it applies only to cases arising under the Act, and we have already held that the restriction upon injunctions imposed by this Act cannot govern this case." *Id.* at 298 (footnotes omitted).

Section 11's inapplicability arose only from the section's plain restriction to Norris-LaGuardia injunctions.

From the effective date of Taft-Hartley in late summer, 1947, until June 28, 1948, the effective date of the new § 3692, an alleged contemnor of a Taft-Hartley injunction would probably have been denied the jury trial guaranteed by § 11 of Norris-LaGuardia, because the injunction would not have been one arising under Norris-LaGuardia itself. No reported case indicates any court faced this issue.

---

[54]The events, including the contempt trial, occurred between October 21 and December 5, 1946. The matter was argued before this Court one month later, January 14, 1947. The decision was handed down March 6, 1947, one month before full Congressional debate on the Taft-Hartley amendments began, and one year before § 3692 was enacted.

C. Until the effective date of the Taft-Hartley amendments to the National Labor Relations Act in the summer of 1947, Norris-LaGuardia certainly governed all injunctions issued by federal courts in labor disputes.[55] During that fifteen-year period, courts had not limited the scope and reach of all thirteen sections of Norris-LaGuardia, except on a few rare occasions. Only when no "labor dispute" was involved with the Norris-LaGuardia definition contained in 29 U.S.C. § 113(c) had the courts limited its impact.[56] The term "labor dispute" was liberally interpreted, and was "intended to embrace controversies other than those between employer and employees . . ." *New Negro Alliance v. Sanitary Grocery Co., supra,* 303 U.S. at 560-61. When Congress enacted the Taft-

[55]This assertion is true, with the very limited exception of the power of courts of appeal to enforce National Labor Relations Board orders against employers, granted by § 10(e), (f), (g), and (h) of the National Labor Relations Act of 1935. This power did not intrude on the principles of Norris-LaGuardia, which concerned injunctive power directed against labor. 29 U.S.C. § 102. From 1935 to 1947, the courts had occasion to consider the relationship between Norris-LaGuardia restrictions and the limited injunctive powers granted in 1935. See, generally, Note, "Accommodation of the Norris-LaGuardia Act to Other Federal Statutes," 72 Harv. L. Rev., 354, 357-60 (1958). The courts resolved any conflicts in favor of the purposes of Norris-LaGuardia: "The necessary inference is that in all other respects, the effect of the Norris-LaGuardia Act upon the jurisdiction of 'courts sitting in equity' was left unimpeded." *Donnelly Garment Co. v. Internat'l Ladies Garment Workers Union,* 99 F.2d 309, 315 (8th Cir. 1938), *cert. denied,* 305 U.S. 662 (1939). See also *Blankenship v. Kurfman,* 96 F.2d 450, 453-54 (7th Cir. 1938); *Internat'l Bro. of Teamsters v. Internat'l Union of Brewery, etc. Workers,* 106 F.2d 871, 876-77 (9th Cir. 1939); *Burlington Mills Corp. v. Textile Workers Union,* 44 F.Supp. 699 (W.D. Va. 1941); but see, *Oberman & Co. v. United Garment Workers of America,* 21 F.Supp. 20 (W.D. Mo. 1937).

[56]*Russell v. United States,* 86 F.2d 389, 393 (8th Cir. 1936); and *Hill v. United States ex rel. Weiner,* 84 F.2d 27, 31 (3d Cir. 1936), *rev'd on other grounds,* 300 U.S. 105 (1937).

Hartley amendments which embraced the same definition of labor disputes contained in the National Labor Relations Act, the term had its own meaning, virtually without limitation, and cannot reasonably be read in any exclusive manner.

Secondly, Congress was fully aware of *United States v. United Mine Workers.*[57]

The fact that Congress methodically eliminated the restrictive language of § 11 a year after *United States v. United Mine Workers* so that the new jury trial statute applied to all labor disputes, impels one conclusion:[58] the new statute applies universally to all labor disputes, not just those governed by Norris-LaGuardia.[59] Congress could not have intended the term "labor dispute" in § 3692 to mean anything less encompassing than that contained within the definition of Norris-LaGuardia and Taft-Hartley.

D. The legislative history of the recodification of "Title 18, Crimes and Criminal Procedures" does not reveal that Congress intended to restrict the impact

[57]See I, *Legislative History of the Labor Management Relations Act of 1947* at 420, 1326 (N.L.R.B. 1948).

[58]Where the Court decides an important case, any Congressional enactments taking place shortly thereafter are presumed to be in full cognizance of the Court's holding. See *Auto Workers v. Wisconsin Employment Relations Bd.,* 351 U.S. 266, 273 (1956).

[59]Query: Would § 3692 require a jury trial after its amendment in 1948 in cases involving government employees? Plainly so, but see, *United States v. Robinson,* 449 F.2d 925, 931-32 (9th Cir. 1971). *Cf. American Postal Workers Union v. United States Postal Service,* 356 F.Supp. 335, 336 (E.D. Tex. 1972). Congress believed that *United States v. United Mine Workers* "did not hold in broad terms that the government was exempted from the Norris-LaGuardia Act." I, *Legislative History of the Labor Management Relations Act of 1947,* at 420 (N.L.R.B. 1948).

of § 3692 to injunctions "arising under this Act." The only limitation imposed in that section is that the injunction arise out of a "labor dispute."[60] Rather, the revisers intended to remove the restrictions relied upon by this Court in 1947:

> The phrase "or the District of Columbia arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute" was inserted *and reference to specific sections of the Norris-LaGuardia Act* [§§ 101-115 Title 29, U.S.C. 1940 ed] were eliminated. (emphasis supplied) H.R. Rep. 304, 80th Cong., 1st Sess., p. A176.

This language indicates that Congress intended to expand the jury trial provision beyond the limitations provided in Norris-LaGuardia.[61]

Nor was the Criminal Code enactment in 1945 only a "specific transposition to Title 18 of § 11." Brief of the Board to the Ninth Circuit, p. 60. This belies the massive undertaking reflected in the process of revision, which led to the whole revised Criminal Code:

[60]The proviso contained in the second paragraph indicates Congress full well applied all substantive restrictions it thought applicable.

[61]It is significant that H.R. 2200, 79th Cong., 2d Sess. (1946), proposed a different § 3692:

> "In all cases of contempt in any court of the United States or the District of Columbia arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute, the accused shall, enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed."

The subsequent deletion of the reference to "in any court of the United States or the District of Columbia" further indicates Congress' intent to make the statute universally applicable.

> "Several preliminary drafts of the revision were studied most carefully, word for word, and line for line, by these various groups, culminating in the bill now up for consideration." 93 Cong. Rec. 5049 (1947) (Congressman Robsion)

Moreover, these were revisions of former law, not mere recodifications. *Ibid.*, 5048-49.[62]

The 1948 enactment of § 3692 reflects an attempt by Congress to correct the omission pointed out by this Court in *United States v. United Mine Workers,* and to broaden its scope to all labor disputes.

XIV

THE NECESSARY POWER OF THE COURTS TO COERCE COMPLIANCE WITH INJUNCTIONS IS PRESERVED

A. The usual and effective remedy to insure compliance with court orders is civil contempt. *Shillitani v. United States, supra,* 384 U.S. 364, 371, n.9 and Bartosic and Lanoff, *Escalating the Struggles Against Taft-Hartley Contemnors, supra,* at 262. The civil remedy comports with the purpose of § 10(l) to effect immediate and temporary relief pending Board adjudication.

[62]The thorough alteration of companion § 112 of Norris-LaGuardia into a much truncated version in F. R. Crim. P. 42 further indicates that Congress was not unwilling to alter the scope of Norris-LaGuardia as it applied to contempts. Where "changes in phraseology '. . . did not' change meaning or substance," or extend the scope of provisions, H. Rep. No. 304, 80th Cong., 1st Sess., p. A30, the revisers knew how to indicate such a process. This in fact was done to a closely related section, 18 U.S.C. § 402, which is based on the Clayton Act right to a jury trial, at issue in *United States v. Michaelson, supra. See, In Re Union Nacional de Trabajaderos,* 502 F.2d at 117, n.2.

The revision of section 11 into § 3692 is a two edged sword. While broadened in scope to all labor disputes, its provisions are withdrawn from civil contempt proceedings. Several courts have correctly reached this conclusion.[63] Petitioners accept this as consistent with the legislative history and purposes of the Taft-Hartley amendments.

B. The question is raised as to whether a jury trial is guaranteed where criminal contempt is charged of an injunctive order of a court of appeal. Several courts have held that the courts of appeal are not bound by § 3692.[64] Although this Court need not reach this issue, the necessary implication of the arguments advanced by petitioners is that this case may well settle that issue.

As noted above, Part XI § 10(h) does not alter the contempt power of the courts of appeal, but only their jurisdiction to issue injunctions. Petitioners do not shrink from the logic of this argument; the courts of appeal are also bound by the requirement of § 3692 when a petition alleging criminal contempt is filed.

C. The construction of § 3692 advanced by the Board would conflict with *The Boys Markets, Inc. v.*

[63] *Philadelphia Marine Trades Ass'n v. International Longshoremen's Ass'n, Local 1291, supra; Brotherhood of Locomotive Firemen and Enginemen v. Bangor & Aroostook R.R. Co.*, 380 F.2d 570 (D.C. Cir. 1967), cert. denied, 389 U.S. 327, 927 (1967); *N.L.R.B. v. Red Arrow Freight Lines*, 193 F.2d 979 (5th Cir. 1952); *Schauffler v. Local 1291, International Longshoremen's Association*, 189 F.Supp. 737 (E.D. Pa. 1960), *rev'd on other grounds*, 292 F.2d 182 (3rd Cir. 1961) and *Madden v. Grain Elevator, Flour & Feed Mill Workers*, 334 F.2d 1014, 1020 (7th Cir. 1964).

[64] *N.L.R.B. v. Red Arrow Freight Lines, supra*, and *Madden v. Grain Elevator, Flour and Feed Mill Workers, supra.*

Retail Clerks Union Local 770, 398 U.S. 235 (1970) and *Brotherhood of Railway Trainmen v. Chicago River & Indiana R.R. Co.*, 353 U.S. 30, *reh. denied*, 353 U.S. 948 (1957).

In *The Boys Markets, Inc. v. Retail Clerks Union, Local 770*, this Court held that "[t]he literal terms of § 4 of the Norris-LaGuardia Act must be accommodated to the subsequently enacted provisions of § 301(a) of the Labor-Management Relations Act . . ." 398 U.S. at 250. This Court refused to "undermine the validity of the Norris-LaGuardia Act," and dealt "only with the situation in which a collective-bargaining contract contains a mandatory grievance adjustment or arbitration procedure." *Id.* at 253. The "Norris-LaGuardia Act does not bar the granting of injunctive relief in the circumstances of [that] case. . . ." With that decision, an exception to Section 4 of the Norris-LaGuardia Act was created, which doctrine encompasses the vast majority of injunctions presently issued by the federal courts in labor disputes.

In the case at bar, the Board argues that § 3692 is applicable only to those injuctions governed by Norris-LaGuardia itself. *Query:* Would criminal contempts of an injunction issued under the authority of *Boys Markets*, or *Chicago River* require a jury trial? One district court has empanelled a jury for trial of such a contempt.[65] *Restaurant Associates Industries*

[65] It is worth considering that such a restriction on § 3692 would render its impact virtually meaningless. If one were to exclude all injunctions issued under Norris-LaGuardia, and all injunctions issued under 29 U.S.C. § 185(a) and the Railway Labor Act, virtually no injunctions issued out of labor disputes would require a jury trial.

v. Local 71, 79 L.R.R.M. 2502, 2506, n.4 (E.D. N.Y. 1972).[66] The Board's position that labor injunctions issued outside of Norris-LaGuardia do not require the application of § 3692[67] would remove the limited exception to Norris-LaGuardia created in the *Boys Markets* into a total repudiation of that Act. There is simply no purpose to be perceived by such a limitation in exactly those circumstances where such a jury was most intended by the enactment of Norris-LaGuardia.

XV

CONCLUSION

It is therefore respectfully submitted that the decision of the court below should be reversed.

Respectfully submitted,

VAN BOURG, ALLEN, WEINBERG,
WILLIAMS AND ROGER,
VICTOR J. VAN BOURG,
DAVID A. ROSENFELD,
Attorneys for Petitioners.

SHELDON OTIS,
Of Counsel.

January 7, 1975.

---

[66]Cf. *North American Coal Corporation v. Local Union 2262, United Mine Workers of America,* 497 F.2d 459, 467, n.4 (6th Cir. 1974).

[67]This could be extended to the recodification of § 112 of Norris-LaGuardia into F. R. Crim. P. 42.

Supreme Court, U. S.
FILED
FEB 27 1975
MICHAEL RODAK, JR., CLERK

No. 73-1924

In the Supreme Court of the United States

OCTOBER TERM, 1974

JAMES R. MUNIZ AND BROTHERHOOD OF TEAMSTERS AND AUTO TRUCK DRIVERS LOCAL NO. 70, IBTCHWA, PETITIONERS

v.

ROY O. HOFFMAN, DIRECTOR, REGION 20, NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT

ROBERT H. BORK,
Solicitor General,
ALLAN ABBOT TUTTLE,
Assistant to the Solicitor General,
Department of Justice,
Washington, D.C. 20530.

PETER G. NASH,
General Counsel,
JOHN S. IRVING,
Deputy General Counsel,
PATRICK HARDIN,
Associate General Counsel,
NORTON J. COME,
Deputy Associate General Counsel,
ELINOR HADLEY STILLMAN,
Attorney,
National Labor Relations Board,
Washington, D.C. 20570.

INDEX

	Page
Opinions below	1
Jurisdiction	2
Statutes involved	2
Questions presented	2
Statement	3
A. The injunction orders of February 13 and April 28, 1970	3
B. The contempt proceedings in the district court	5
C. The decision of the court of appeals	10
Summary of Argument	12
Argument	16
I. 18 U.S.C. 3692 does not require a jury trial in criminal contempt proceedings growing out of violations of injunctions issued under the National Labor Relations Act	16
A. Section 11 of the Norris-LaGuardia Act	16
B. The National Labor Relations Act	19
C. 18 U.S.C. 3692	26
II. A jury trial was not required by the Constitution in order to subject the petitioner union to the fine for criminal contempt imposed in this case	35
A. Jury trials are not constitutionally required in criminal contempt proceedings against unions or corporations, which cannot be imprisoned	35

569-660—75——1

Argument—Continued
B. In any event the fine imposed on the petitioner union was not such as to make the contempt "serious" — Page 43
1. The distinction between "petty" and "serious" offenses — 43
2. 18 U.S.C. 1(3) is an inadequate basis for determining whether a fine is "petty" — 45
3. The fine imposed on the union in the present case was not so serious as to require a jury trial — 52
Conclusion — 54
Appendix — 55

CITATIONS

Cases:

Amalgamated Ass'n of Motor Coach Employees v. *Dixie Motor Coach Corp.*, 170 F. 2d 902 — 22
Amazon Cotton Mill Co. v. *Textile Workers Union*, 167 F. 2d 183 — 22
Argersinger v. *Hamlin*, 407 U.S. 25 — 41
Bakery Sales Drivers Local Union 33 v. *Wagshal*, 333 U.S. 437 — 21
Baldwin v. *New York*, 399 U.S. 66 — 15, 44
Bloom v. *Illinois*, 391 U.S. 194 — 14, 39, 43
Boys Markets, Inc. v. *Retail Clerks Union, Local 770*, 398 U.S. 235 — 17
Brotherhood of Locomotive Firemen and Enginemen v. *Bangor & Aroostook Railroad Co.*, 380 F. 2d 570 — 28
Callan v. *Wilson*, 127 U.S. 540 — 38

Cases—Continued

Page
Cass v. *United States*, 417 U.S. 72 — 32
Cheff v. *Schnackenberg*, 384 U.S. 373 — 39, 42, 44
Debs, In re, 158 U.S. 564 — 40
Douds v. *Local 294, Teamsters*, 75 F. Supp. 414 — 21
Duncan v. *Louisiana*, 391 U.S. 145 — 38, 39, 40, 41, 43, 44
Fair Lawn Education Association, In re, 63 N.J. 112, 305 A. 2d 72, certiorari denied, 414 U.S. 855 — 42, 49
Frank v. *United States*, 395 U.S. 147 — 36
Green v. *United States*, 356 U.S. 165 — 36, 37, 39, 40, 46
Holland Furnace Co., In re, 341 F. 2d 548, certiorari denied, 381 U.S. 924 — 42
International Longshoremen's and Warehousemen's Union, Local No. 10 v. *Hoffman*, No. 73–1813, certiorari denied November 11, 1974 — 2
Jefferson City Education Ass'n, In re, 115 N.J. Super 42, 278 A. 2d 206, certiorari denied, 404 U.S. 948 — 42
LeBaron v. *Printing Specialities, Local 388*, 75 F. Supp. 678 — 21
Local 825, Operating Engineers, In re, 57 LRRM 2143, certiorari denied, 379 U.S. 934 — 42
Madden v. *Grain Elevator, Flour and Feed Mill Workers*, 334 F. 2d 1014, certiorari denied, 379 U.S. 967 — 28
Michaelson v. *United States*, 266 U.S. 42 — 27
Mitchell v. *Barbee Lumber Co.*, 35 F.R.D. 544 — 28, 31
National Labor Relations Board v. *Mackay Radio Co.*, 304 U.S. 333 — 31
National Labor Relations Board v. *Red Arrow Freight Lines*, 193 F. 2d 979 — 28
Piccinini, In re, 35 F.R.D. 548 — 28, 31

Cases—Continued

	Page
Rankin v. *Shanker*, 23 N.Y. 2d 111, 242 N.E. 2d 802, stay denied, 393 U.S. 930	42, 49
San Francisco Typographical Union No. 21 (California Newspapers, Inc. and Emporium-Capwell Corp.), 188 NLRB 673, affirmed, 465 F. 2d 53	6
Schauffler v. *Local 1291, International Longshoremen's Ass'n*, 189 F. Supp. 737, reversed on other grounds, 292 F. 2d 182	28
Schick v. *United States*, 195 U.S. 65	
Shillitani v. *United States*, 384 U.S. 364	43
Tinder v. *United States*, 345 U.S. 565	34
Union Nacional de Trabajadores, In re 502 F. 2d 113	25, 28, 29, 31, 34
United States v. *Barnett*, 376 U.S. 681	38, 40, 46
United States v. *Hutcheson*, 312 U.S. 219	18
United States v. *Robinson*, 449 F. 2d 925	28
United States v. *United Mine Workers*, 330 U.S. 258	12, 23, 24, 33, 34, 41, 42
United Steelworkers v. *R. H. Bouligny, Inc.*, 382 U.S. 145	53
Virginian Railway Co. v. *System Federation No. 40*, 300 U.S. 515	31
Winn-Dixie Stores, In re 386 F. 2d 309	28
Constitution, statutes and rule:	
United States Constitution:	
Article III, Section 2	36, 60
Sixth Amendment	36, 38–39, 43, 60
Fourteenth Amendment	38, 43
Act of June 25, 1948, 62 Stat. 683	26
Air Quality Act of 1967, 81 Stat. 502, 42 U.S.C. 1857f–6c	47
Antitrust Procedures and Penalties Act, Pub. L. No. 93–528, Section 3, 88 Stat. 1708	48
Civil Rights Act of 1957 (Section 151, 71 Stat. 638, 42 U.S.C. 1995)	35

Constitution and statutes—Continued

	Page
Clayton Act, 38 Stat. 738; repealed, 62 Stat. 864:	
Section 21	27
Section 24	27
Clean Air Act Amendments of 1970, 84 Stat. 1700	47
Fair Labor Standards Act, 52 Stat. 2060, 29 U.S.C. 201, *et seq*	31
Immigration and Naturalization Act, 66 Stat. 226, 8 U.S.C. 1321	46
Labor Management Relations Act, 1947 (61 Stat. 136, 29 U.S.C. 141, *et seq.*)	20
Section 303	24
Marine Mammal Protection Act of 1972, 86 Stat. 1036, 16 U.S.C. 1375(a)	46
National Labor Relations Act, as amended (29 U.S.C. 151, 49 Stat. 449, 61 Stat. 136, 73 Stat. 519, *et seq.*):	
Section 2(9)	31
Section 8(b)	20, 55
Section 8(b)(4)	12, 20, 55
Section 8(b)(4)(B)	3, 5, 55
Section 8(b)(7)	20
Section 8(e)	20
Section 10(a)	30
Section 10(b)	30
Section 10(c)	30
Section 10(e)	19, 30
Section 10(f)	19, 30
Section 10(h)	12, 19, 21, 25, 55
Section 10(j)	21, 25, 28, 30, 31
Section 10(k)	30
Section 10(l)	*passim*

Constitution and statutes—Continued

	Page
Norris-LaGuardia Act (47 Stat. 70, as amended, 29 U.S.C. 101, *et seq)*	12, 16, 58
Section 4	23, 30, 58
Section 5	30
Section 7	30
Section 9	30
Section 10	30
Section 11(1946 ed.)	*passim*
Section 12	27
Section 113(c)	31
Occupational Safety and Health Act, 84 Stat. 1590, 29 U.S.C. 651	46, 47
Air Quality Act of 1967, 81 Stat. 502, 42 U.S.C. 18 57f-6c	47
29 U.S.C. 666(a)	46, 47
29 U.S.C. 666(b)	47
29 U.S.C. 666(c)	47
29 U.S.C. 666(e)	47
Sherman Act, 26 Stat. 209, 15 U.S.C. 1, *et seq*	48
18 U.S.C. 1	45
18 U.S.C. 1542–1545, notes	26
18 U.S.C. 3691	27
18 U.S.C. 3692	2, 10, 13, 14, 16, 26, 27, 28, 29, 30, 32, 33, 34, 35, 59
18 U.S.C. 3693	27
18 U.S.C. 4202, note	26
18 U.S.C. 1(3)	11, 15, 44, 45, 49, 52, 60
18 U.S.C. 402	27
Ill. Ann. Stat., ch. 38, § 1005–9–1(5) (Smith-Hurd, 1973)	48
N.Y. Penal Law § 80.10 (McKinney, 1967)	48

Miscellaneous:

	Page
Rule 42, Fed. R. Crim. P	27
72 Cong. Rec 9993	45
75 Cong. Rec. 4508–4509	18
75 Cong. Rec. 4510–4511	18
75 Cong. Rec. 4621–4624	18
75 Cong. Rec. 4626	18
75 Cong. Rec. 4630	18
75 Cong. Rec. 4757	18
75 Cong. Rec. 4761	18
75 Cong. Rec. 5003–5005	18
75 Cong. Rec. 5469	18
75 Cong. Rec. 5470	17
75 Cong. Rec. 5471	18
75 Cong. Rec. 5472	18
75 Cong. Rec. 5509	18
75 Cong. Rec. 5550–5551	18
75 Cong. Rec. 6329	18
75 Cong. Rec. 6335–6336	18
75 Cong. Rec. 6337	19
75 Cong. Rec. 6450	19
75 Cong. Rec. 6453	19
92 Cong. Rec. 9122	35
93 Cong. Rec. 4847	34
93 Cong. Rec. 5048–5049	46
93 Cong. Rec. 5049	33
94 Cong. Rec. 8721–8722	33
94 Cong. Rec. 8864–8865	33
103 Cong. Rec. 8684	34
103 Cong. Rec. 8684–8687	35
103 Cong. Rec. 8686–8687	35
103 Cong. Rec. 8688–8691	35
103 Cong. Rec. 12842–12843	35
Frankfurter and Greene, *The Labor Injunction* (1930)	17

Miscellaneous—Continued

Hearings on Reform of the Federal Criminal Laws before the Subcommittee on Criminal Laws and Procedures of the Senate Committee on the Judiciary, 92d Cong., 1st Sess., pt. 1 (1971) ..... Page 50, 51, 52
Holmes, *Privilege, Malice and Intent*, 8 Harv. L. Rev. 1 (1930) 17
H. Conf. Rep. No. 821, 72d Cong., 1st Sess 18
H. Conf. Rep. No. 510, 80th Cong., 1st Sess 25
H.R. 5315, 72d Cong., 1st Sess 17, 18
H.R. 2200, 79th Cong., 1st Sess 33
H.R. 3190, 80th Cong., 1st Sess 25
H. Rep. No. 1699, 71st Cong., 2d Sess 45
H. Rep. No. 669, 72d Cong., 1st Sess 18
H. Rep. No. 152, 79th Cong., 1st Sess 33
H. Rep. No. 304, 80th Cong., 1st Sess 26, 46
I Leg. Hist. 414 22
I Leg. Hist. 461–462 24
I Leg. Hist. 561 25
I Leg. Hist. 876, 93 Cong. Rec. 6296 21
I Leg. Hist. 887, 93 Cong. Rec. 6385 21
II Leg. Hist. 1012–1013, 93 Cong. Rec. 3838 20
II Leg. Hist. 1055–1056, 93 Cong. Rec. 4131 20
II Leg. Hist. 1109–1113, 93 Cong. Rec. 4199–4202 21
II Leg. Hist. 1323–1324, 93 Cong. Rec. 4757 24
II Leg. Hist. 1348, 93 Cong. Rec. 4834 25
II Leg. Hist. 1364, 93 Cong. Rec. 4843 21
II Leg. Hist. 1370 34
II Leg. Hist. 1399–1400, 93 Cong. Rec. 4874–4875 25
II Leg. Hist. 1544, 93 Cong. Rec. 6445–6446 21
S. 935, 72nd Cong., 1st Sess 18
S. Rep. No. 163, 72d Cong., 1st Sess 17, 18

Miscellaneous—Continued

Page
S. Rep. No. 573, 74th Cong., 1st Sess 31
S. Rep. No. 105, 80th Cong., 1st Sess 22, 24
S. Rep. No. 1620, 80th Cong., 2d Sess 34
Standards Relating to Sentencing Alternatives and Procedures, A.B.A. Special Committee on Minimum Standards for Criminal Justice (Approved Draft, 1968) and Commentary 51, 52

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 73–1924

JAMES R. MUNIZ AND BROTHERHOOD OF TEAMSTERS AND AUTO TRUCK DRIVERS LOCAL NO. 70, IBTCHWA, PETITIONERS

v.

ROY O. HOFFMAN, DIRECTOR, REGION 20, NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. i–xvi)[1] is reported at 492 F. 2d 929. The district court's Order and Adjudication in Criminal Contempt (Resp. App. C, 23a–25a), Findings of Fact and Conclusions of Law Re: Criminal Contempt Proceedings (Resp. App. D, 26a–40a), and Judgment Imposing

---

[1] "Pet. App." refers to the appendix to the petition, "Resp. App." to the appendix to respondent's memorandum in response to the petition, and "A." to the parties' joint appendix in this Court.

Fines and Penalties in Re: Criminal Contempt (Resp. App. E, 41a–48a) have not been reported.

JURISDICTION

The judgment of the court of appeals was entered on January 25, 1974, and amended on March 7, 1974. Petitions for rehearing and rehearing *en banc* were denied on March 26, 1974 (Pet. App. xvii–xviii). The petition for a writ of certiorari was filed on June 24, 1974, and was granted on November 11, 1974, limited to the two questions restated below (A. 53–54).[2] The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTES INVOLVED

The relevant statutory and constitutional provisions are set forth in the Appendix hereto, *infra*. pp. 55–56.

QUESTIONS PRESENTED

1. Whether 18 U.S.C. 3692[3] requires a jury trial in a proceeding to adjudge a union and its officers in criminal contempt for having violated injunctions issued by the district court pursuant to section 10(*l*) of the National Labor Relations Act.

[2] On November 11, 1974, the Court also denied the petition in No. 73–1813, *International Longshoremen's and Warehousemen's Union, Local No. 10* v. *Hoffman*, which sought review of other aspects of the decision of the court of appeals.

[3] 18 U.S.C. 3692 provides: "In all cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed."

2. Whether a jury trial was constitutionally required where a $10,000 fine was imposed on the union for criminal contempt.

STATEMENT

A. THE INJUNCTION ORDERS OF FEBRUARY 13 AND APRIL 28, 1970

California Newspapers, Inc., doing business as the Independent Journal (Journal), publishes a daily newspaper of general circulation in Marin County, California. In January 1970, San Francisco Typographical Union Local 21 (Local 21) commenced picketing the Journal's San Rafael, California, publishing plant (Pet. App. ii–iii). On February 11, 1970, the Regional Director of the National Labor Relations Board (respondent herein), pursuant to a charge filed by the Journal, petitioned the district court under Sectiion 10(*l*) of the National Labor Relations Act as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 15, *et seq.*), for a temporary injunction against Local 21 and Locals 85 and 287 of the Teamsters (Locals 85 and 287). The petition alleged that there was reasonable cause to believe that the named unions were engaging in secondary boycott activity prohibited by Section 8(b)(4)(B) of the Act, principally by picketing to induce employees of various neutral employers at the Port of San Francisco to refuse to work, with an object of preventing and interfering with the delivery of newsprint to the Journal (Pet. App. iii).

On the same date, February 11, the district court issued a temporary restraining order and order to show cause, and, on February 13, following a hearing,

a temporary injunction. Pending a final disposition by the Board, the court (A. 6–9) enjoined the named unions, "their officers, representatives, agents, servants, employees, attorneys, and all members, persons and other labor organizations acting in concert or participation with them or any of them," from, *inter alia*:

> Engaging In, or by picketing, orders, directions, solicitation, requests or appeals, however given, made or imparted, or by any like or related acts or conduct, * * * Inducing Or Encouraging any individual employed by Star Terminal Co., Inc., Garden City Transportation Co., Ltd., Globe-Wally's Fork Lift Service, Inc. (herein called Star, Garden City, and Globe), or by any motor carrier, lift truck service company or other person engaged in commerce or in an industry affecting commerce To Engage In, a strike, slowdown or refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities, or to perform any service; or sanctioning, supporting or promoting any such strike or refusal; or in any such or similar manner or by any other means * * * Threatening, Coercing Or Restraining said employers, or any other person engaged in commerce or in an industry affecting commerce,—where in either case An Object Thereof is: (1) to force or require Powell River-Alberni Sales Limited (herein called Powell), or any other person, to cease doing business with Journal; or (2) to force or require Star, Garden City, or any other person to cease doing business with Powell, or to force or require Globe or any other person to cease doing business with Garden City, in order to compel Powell to cease doing business with Journal.

On April 28, 1970, the Regional Director filed in the district court a second petition for an injunction against Local 21. This petition, based on charges filed by the Journal and the Emporium-Capwell Corporation, alleged that Local 21 was further violating Section 8(b)(4)(B) of the Act by picketing and distributing handbills appealing to the public not to patronize various retail stores because they were advertising in the Journal (Pet. App. iv). On the same date, Local 21 consented to the entry of an order pending the final disposition by the Board (A. 10–13), enjoining "Local 21 * * * and all members, persons and labor organizations acting in concert or participation with it," from engaging in the charged unlawful conduct at the picketed stores or at the premises of other stores advertising in the Journal, or from:

> Threatening, coercing or restraining [the named firms] or any other firm advertising in The Independent Journal newspaper, by consumer picketing or by any like or related acts or conduct, where an object thereof is to force or require the said advertisers to cease advertising in The Independent-Journal newspaper or to cease doing business with [the Journal].

B. THE CONTEMPT PROCEEDINGS IN THE DISTRICT COURT

Despite these injunctions and an order, issued on June 24, 1970, holding Local 21 and certain of its officers in civil contempt of the April 28 injunction,[4]

[4] That adjudication (except as to two officials not involved here) and the Board's subsequent decision in the unfair labor practice case, finding that Local 21 had violated Section 8(b)(4)(B) of the Act by its picketing before and after the issu-

"the tempo of illegal activities in violation of both injunctions increased, with other locals participating" (Pet. App. iv). The new participants "included * * * Teamsters No. 70 and James R. Muniz, its president" (Pet. App. iv–v). As the court of appeals later described the activities (Pet. App. v): "The effort broadened to boycott or quarantine San Rafael and all of Marin County, curtailing deliveries of all supplies, causing traffic tie-ups and attempting to prevent delivery trucks from entering exit ramps from main highways to enter the city."

Accordingly, on October 19, 1970, the Regional Director filed with the district court a petition to adjudge Local 21 and certain other labor organizations and their officials, including petitioners, Teamsters Local 70 and its president, James Muniz, in civil and criminal contempt for failure to obey the February 13 and April 28 injunctions. The petition charged that the named unions and their officers, acting in furtherance of a joint venture, had committed at least 28 violations of the injunctions (A. 14–36).

The district court ordered the named defendants, including petitioners, to show cause why they should not be adjudged in civil and criminal contempt (A. 39–42).[5] Subsequently the court heard argument on a motion by the defendants for a jury trial in the crim-

ance of the April 28 injunction (*San Francisco Typographical Union No. 21* (*California Newspapers, Inc. and Emporium-Capwell Corp.*), 188 NLRB 673) were affirmed by the court of appeals, 465 F. 2d 53 (C.A. 9).

[5] Four Board attorneys appearing for the Regional Director were appointed by the district court as counsel to prosecute the criminal contempt proceeding (A. 37–39).

inal contempt proceeding (A. 54–55). The court denied the motion (A. 55–56).

Testimony was taken by the district court for 17 days, between November 3 and December 15, 1970. On December 23, the court found certain of the defendants, including petitioners, guilty of criminal contempt of the February 13 and April 28 injunctions.[6] The court's Order and Adjudication in Criminal Contempt (Resp. App. C, 23a–25a) and its formal Findings and Conclusions (Resp. App. D, 26a–40a) were entered the next day, December 24.[7]

The district court found that all of the defendants, including petitioners, "[o]n or about, or prior to, October 7, 1970 * * * embarked upon a joint plan, program and campaign to create a boycott of goods, materials, commodities and services destined to, consigned to, or utilized by firms advertising in the Journal or to firms doing business with the Journal" (Resp. App. D, 31a). The court found that the defendants, including petitioners, "[i]n furtherance and support of their aforesaid joint plan, program and campaign," engaged in at least 26 acts of picketing, oral inducement of work stoppages, threats, and

[6] One union (Longshoremen's Local 10) and one individual (DeMartini) were not adjudged in criminal contempt because the proof did not establish the requisite degree of willfulness on their part (Resp. App. C, 23a, 24a–25a). Neither is involved in the case before this Court.

[7] The district court's Order and Adjudication in Civil Contempt (Resp. App. A, 1a–6a) issued the same day, and its Findings of Fact and Conclusions of Law Re: Civil Contempt Proceedings (Resp. App. B, 7a–22a) issued on January 28, 1971. The civil contempt findings are not at issue here.

569-660—75——2

harassment (*id.* at 31a–37a), of which the following is typical (*id.* at 33a):

> 8. On or about October 12, 1970, respondents, by their pickets and agents, by picketing and by other means, induced and encouraged drivers of Lucky not to perform services at the Lucky store located at 720 Center Street, Fairfax, California, and as a consequence prevented regular drivers from performing their duties for Lucky.

The defendants, including petitioners, caused traffic tie-ups in San Rafael (*id.* at 34a):

> 14. On or about October 13, 1970, respondents picketed three corners of the Highway 101 off-ramp to San Rafael, California, at Mission and Heatherton Streets, carrying signs the legend on some of which read: "Unfair To Teamsters—Scabs Must Go." By such picketing, and other conduct, respondents obstructed traffic entering San Rafael while inducing and encouraging truck drivers not to perform services for, make deliveries to, or pickups from retail stores located in San Rafael.

The court noted particularly petitioner Muniz' involvement in one act of harassment (*id.* at 32a):

> 3. Also on or about October 8, 1970, respondents, by their agents, including Respondent Richardson and Respondent Muniz, harassed the driver of a truck of Garden City Transportation Co., Ltd. (herein called Garden City) on its return trip to Garden City's premises after making delivery of newsprint to the Journal, and picketed the premises of Garden City and its truck with signs, the legend on some of which read: "Teamsters on Strike—Scabs Must Go." As a consequence of such picketing, drivers of Garden City engaged in work stoppages and refusals to perform services for their employer. In addition respondents threatened Garden City with the shutdown of its operations on October 9, 1970.

The court found that by such acts and conduct the defendants, including petitioners, encouraged employees of retail stores and other picketed firms to engage in work stoppages, with the object of forcing the firms "to cease placing advertisements in or to otherwise cease doing business with each other or with the Journal" (*id.* at 37a–39a). The court concluded that by such acts and conduct certain of the defendants, including petitioners, were "in criminal contempt of this Court by reason of their wilful disobedience of and resistance to, and their wilful failure and refusal to comply with" the two injunctions (Resp. App. C, 24a–25a; see also Resp. App. D, 39a–40a).

Pursuant to the district court's request (A. 57), counsel for the Regional Director filed with the court a "Presentence Report and Recommendations", listing previous injunctions issued under Section 10 (*l*) of the Act against the various defendants, data on the financial conditions of the unions, and the dollar amount of damages suffered by five of the twenty-six affected business establishments as a result of defendants' illegal conduct (A. 43–47). The data on the financial conditions of the unions came from the most recent reports filed by them with the Department of Labor ("Labor Organization Annual Report, Form LM–2"), which reports were provided the district

court (A. 48–52). Petitioner Local 70's LM–2 showed that, in 1969, it took in a total of $1,013,742 in dues from its members (A. 49). At the end of 1969, its total assets amounted to $895,627, of which $95,534 was listed as "cash in banks" (A. 49). Local 70 filed no documents with the district court respecting its then current financial status.

The district court ordered each of the unions adjudged in criminal contempt, including petitioner Local 70, to pay a fine of $25,000, subject to the qualification that payment of $15,000 of the amount would be suspended for one year and remitted to the union upon the court's determination that the union had not further violated the injunctions (Resp. App. E, 41a–45a). The individuals adjudged in criminal contempt, including petitioner Muniz, were placed on probation for one year, with the condition that, if they engaged in further violations of the injunctions, they would be subject to imprisonment for a term not exceeding six months (Resp. App. E, 45a –46a).

C. THE DECISION OF THE COURT OF APPEALS

The court of appeals affirmed the judgments of civil and criminal contempt (Pet. App. vi). The court rejected the contention that 18 U.S.C. 3692 (n. 3, *supra*) requires a jury trial in criminal contempt cases arising out of violations of injunctions issued pursuant to Section 10(*l*) of the National Labor Relations Act. The court held that Section 3692 represents merely a recodification of Section 11 of the Norris-LaGuardia Act, 47 Stat. 72, 29 U.S.C. (1946 ed.) 111 (*infra,* p. 18), and, as such, restricts only the powers

of courts in contempt proceedings arising directly out of labor disputes between private employers and unions; it does not apply to contempts of orders issued pursuant to "the administrative scheme" of the National Labor Relations Act (Pet. App. ix–x).

The court of appeals also rejected the contention that a jury trial was constitutionally required because fines exceeding $500 had been imposed on the unions (Pet. App. x–xii). Noting that the decisions of this Court appeared to require a jury trial when the penalty imposed in criminal contempt was "serious," rather than "petty," the Court said (Pet. App. xiv–xv):

> In this plethora of discussion establishing and reexamining rules as to when a jury trial is required, there is hardly a word spoken about the line at which the measure in dollars of a fine causes the contempt to cease being "petty" and to become "serious". Certainly we cannot understand *Cheff* [*v. Schnackenberg,* 384 U.S. 373] as holding that the sum of $500 constitutes that line simply because it uses 18 U.S.C. § 1(3) to express a point of division between permissible and impermissible terms of imprisonment at which a jury is required. A deprivation of his liberty for a period of more than six months could certainly be serious to any individual, whereas a fine of $500 to a large corporation or to a large union might have no deterrent or punitive effect at all [footnotes omitted].[8]

[8] The court addressed itself again to 18 U.S.C. 1(3) in a subsequent footnote (Pet. App. xvi, n. 9):

"The six month-$500 provision of 18 U.S.C. § 1(3) defining the limits of 'petty' offenses became law in 1930. Act of Dec. 16, 1930, ch. 15, 46 Stat. 1029. While the value of personal free-

Turning to the facts of this case, the court held that the fines imposed on the unions for criminal contempt were not so serious as to be constitutionally prohibited absent a jury trial (Pet. App. xvi).

SUMMARY OF ARGUMENT

I

In 1947, the 80th Congress added Section 10(*l*) to the National Labor Relations Act, providing an interlocutory injunctive remedy to be invoked when a regional officer of the Board has reason to believe that a union has engaged in secondary boycott activity prohibited by Section 8(b)(4) of the Act. Under Section 10(*l*), a district court, upon appropriate petition by the Board's representative, is free to grant a temporary injunction "notwithstanding any other provision of law." This clause, coupled with the express terms of Section 10(h) of the Act, makes it clear that the district court's jurisdiction in granting such injunctive relief is not restricted by the provisions of the Norris-LaGuardia Act, 47 Stat. 70, as amended, 29 U.S.C. 101–115, including the provision of that Act (Section 11, 29 U.S.C. (1946 ed.) 111) requiring jury trials of contempts of injunctions "arising under this [the Norris-LaGuardia] Act." *United States* v. *United Mine Workers,* 330 U.S. 258, 298. That this result was consciously intended by Congress is shown by the debate on a proposal, ultimately defeated, to allow private employers to seek injunctions against secondary

---

dom has not depreciated in the intervening period the same cannot be said either of the value of the dollar or of the growth in dollars of the assets of large organizations."

boycotts but to preserve the right of jury trial for contempts of such injunctive orders.

In 1948, the same Congress that had enacted Section 10(*l*) of the National Labor Relations Act the preceding year transferred Section 11 of the Norris-LaGuardia Act, with certain minor changes, to Section 3692 of Title 18. This was done as part of a general recodification of federal laws related to crimes and criminal procedure, and there is no indication that Congress thereby intended to make any substantive changes which would make a jury trial available in contempt proceedings arising from injunctive orders issued pursuant to the National Labor Relations Act. The reviser's note to Section 3692 simply states that the provision is based on Section 11 of the Norris-LaGuardia Act.

Nor is a different conclusion required by the fact that, in transferring Section 11 to Title 18, Congress replaced the reference to "cases arising under this [the Norris-LaGuardia] Act" with the phrase "arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute." This new phrasing was necessary to orient the new provision to the kinds of cases which arose under the Norris-LaGuardia Act, for which "labor dispute" is the jurisdictional touchstone. The National Labor Relations Act, on the other hand, is a law which is principally concerned with preventing unfair labor practices. Hence, there is no reason to disturb the

virtually uniform conclusion of the federal courts, adhered to for more than twenty-five years since its enactment, that Section 3692 does not apply to contempt cases arising out of injunctions issued under the National Labor Relations Act.

II

As recently as 1958, in *Green* v. *United States,* 356 U.S. 165, 183, this Court, citing "a long and unbroken line of decisions", held "that criminal contempts are not subject to jury trial as a matter of constitutional right". While this Court subsequently held in *Bloom* v. *Illinois,* 391 U.S. 194, that a jury trial was required for a criminal contempt when a sentence of imprisonment for more than six months was imposed, we submit that the rationale of *Bloom* does not require a jury trial in criminal contempt proceedings against organizations which may not be imprisoned, but only fined. *Bloom* "recognized the potential for abuse in exercising the summary power to imprison for contempt" (391 U.S. at 202); obviously this concern is not implicated when the contemnor is a corporation or other impersonal organization. The Court has long recognized the importance of a court's summary contempt power. While it may be appropriate to compromise that power when it threatens to abuse the liberty interest, there is no need to do so when the only possible penalty is a fine. Bench trials are not inherently unfair, and the amount of any fine imposed is subject to judicial review.

Even if organizations are entitled to jury trials for "serious" (as opposed to "petty") contempts, the fine imposed here did not make the contempt serious. Petitioners' contention that no offense may be deemed "petty" where a fine exceeding $500 has been imposed is grounded on the definition of a petty offense in 18 U.S.C. 1(3)—*i.e.,* "[a]ny misdemeanor, the penalty for which does not exceed imprisonment for a period of six months or a fine of not more than $500, or both." But the Court's holding that a prison sentence of more than six months makes a crime serious, thus requiring a jury trial under the Constitution, was not predicated solely on 18 U.S.C. 1(3), but rather was based on the "near-uniform judgment of the Nation" as expressed in the laws and practices of the federal government and the states. *Baldwin* v. *New York,* 399 U.S 66, 72–73. Moreover, there is need for a uniform rule insofar as imprisonment is concerned, for, in a democracy, one person's liberty is equal to that of any other.

A survey of relevant state and federal laws and of other appropriate gauges of contemporary judgments reveals no such uniformity on the severity of a fine which may properly be imposed for a petty offense. On the contrary, such a survey reveals that a fixed amount such as that stated in 18 U.S.C. 1(3) is an inappropriate standard, especially when the defendant is a collective body like a corporation or a labor organization. A more apt expression of the national consensus would be a standard measuring the severity of a fine by such factors as the economic resources of the defendant and the amount of economic damage

flowing from the offense. Tested by such criteria, the fine of $10,000 imposed on the Union in the present case (apparently amounting to less than one dollar per member or other affiliated individual) cannot be said to have made the Union's contempt a serious offense for which the Constitution would require a jury trial.

ARGUMENT

I. 18 U.S.C. 3692 DOES NOT REQUIRE A JURY TRIAL IN CRIMINAL CONTEMPT PROCEEDINGS GROWING OUT OF VIOLATIONS OF INJUNCTIONS ISSUED UNDER THE NATIONAL LABOR RELATIONS ACT

In 1947 Congress enacted Section 10(*l*) of the National Labor Relations Act (161 Stat. 136, 149–150), authorizing the Board, and not private parties, to obtain from the federal district courts temporary relief against unfair labor practices free of the restrictions of the Norris-LaGuardia Act, 47 Stat. 70, including its requirement, in Section 11, of jury trials in contempt proceedings. Although that jury trial provision was repealed and replaced the next year by a substantially equivalent provision in 18 U.S.C. 3692, the injunctive proceedings provided for by Congress in the 1947 amendments to the National Labor Relations Act were unaffected. Elucidation of these points requires a brief examination of the pertinent portions of the legislative history of the Norris-LaGuardia Act, the National Labor Relations Act, and 18 U.S.C. 3692.

A. SECTION 11 OF THE NORRIS-LAGUARDIA ACT

In 1932, the Norris-LaGuardia Act was enacted, principally as a response to several decades of broad-

scale intervention by federal courts in labor controversies. Such intervention took the form of injunctions issued, often *ex parte,* and always without the guidance of any comprehensive legislative policy.[9] By thus intervening in private disputes between employers and employees without significant reference to any legislative policy defining precise evils against which the public was to be protected, judges were deciding cases largely on the basis of their economic sympathies.[10] To protect the labor movement against the destructive impact of such frequent and unrestricted use of injunctions, Congress severely limited the jurisdiction of the federal courts to issue injunctive orders "in a case involving or growing out of a labor dispute," broadened the definition of labor dispute so as to make clear that "the allowable area of union activity was not to be restricted * * * to an immediate

[9] Thus, Representative Browning, a member of the House Committee on the Judiciary, which reported H.R. 5315, the bill introduced in the House by Representative LaGuardia, observed (75 Cong. Rec. 5470):

"The public policy laid down in the bill * * * is essential, because there should be some standard by which the courts may know, at a time when they are in such confusion, what it is proper to do. I think the most fitting and, in reality, the only proper tribunal to express such a policy is the Congress * * *."

See also S. Rep. No. 163, 72d Cong., 1st Sess. 18; Frankfurter and Greene, *The Labor Injunction* 15 (1930) ("Thus it is that the federal courts, under the Supreme Court's lead, have dealt with labor controversies apart from the authority of federal legislation and untrammelled by state decisions").

[10] Frankfurter and Greene, *The Labor Injunction*, *supra* at 26, citing Holmes, *Privilege, Malice, and Intent*, 8 Harv. L. Rev. 1, 8 (1930). See also *Boys Markets, Inc.* v. *Retail Clerks Union, Local 770*, 398 U.S. 235, 250–251.

employer-employee relation" (*United States* v. *Hutcheson,* 312 U.S. 219, 231), and provided various procedural safeguards, including the jury trial provision in Section 11, which read (47 Stat. 72):

> In all cases arising under this Act in which a person shall be charged with contempt in a court of the United States (as herein defined), the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed: *Provided,* That this right shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to apply to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders, or process of the court.

The legislative history of Section 11 indicates that it was intended to apply to both civil and criminal contempts "arising under this Act." [11]

[11] Section 11 of the Senate bill (S. 935), in the version adopted by the Senate prior to its submission to conference, provided for a jury trial in all cases of contempt of whatever nature, civil or criminal, without limitation to labor disputes. 75 Cong. Rec. 4757, 4761. See also S. Rep. No. 163, 72d Cong., 1st Sess. 1, 7, 23–25, Minority Views, 13–14; 75 Cong. Rec. 4510–4511, 4508–4509, 4621–4624, 4626, 4630, 5003–5005. The House bill (H.R. 5315), on the other hand, was limited to indirect criminal contempts arising out of labor disputes falling within the purview of that bill. 75 Cong. Rec. 5509. See also 75 Cong. Rec. 5469, 5471, 5472; H. Rep. No. 669, 72d Cong., 1st Sess. 10. In conference, a compromise between the House and Senate provisions was worked out. 75 Cong. Rec. 6335–6336, 6329. See also H. Conf. Rep. No. 821, 72d Cong., 1st Sess. 7; 75 Cong. Rec. 5550–5551. Explaining the conference agreement upon the floor of the Senate, Senator Norris stated that "section 11 now provides that anyone charged with contempt in any case arising under this act shall be entitled to a trial by jury." 75 Cong. Rec. 6450, 6453. Discussing the conference agreement upon the floor of the House, Representative LaGuardia agreed with Representative Dyer's explanation that "a jury trial is now in order for contempt, civil or criminal," adding, "That is, arising out of any action contemplated in the act." 75 Cong. Rec. 6337.

B. THE NATIONAL LABOR RELATIONS ACT

A more comprehensive set of protections for the activities of labor organizations was provided in the National Labor Relations Act of 1935 (the "Wagner Act"), 49 Stat. 449. Congress, *inter alia,* proscribed certain unfair labor practices on the part of employers, and established an administrative agency, the National Labor Relations Board, to determine whether such practices had been committed, and, if so, to provide an appropriate remedy. The Board's decision and order was subject to review in the courts of appeals, pursuant to Section 10 (e) or (f) of the Act, 29 U.S.C. 160 (e) or (f). Concluding that the protections of the Norris-LaGuardia Act were not needed in situations covered by the National Labor Relations Act, Congress further provided, in Section 10(h) of the latter Act, 29 U.S.C. 160(h), that, when "granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified or setting aside in whole or in part an order of the Board, * * * the jurisdiction of courts sitting in equity shall not be limited by * * * 'An Act to amend the Judicial Code and to define and limit the jurisdiction of courts

sitting in equity, and for other purposes', approved March 23, 1932 (U.S.C., Supp. VII, Title 29, Secs. 101–115)."

In the Labor-Management Relations Act of 1947 (the "Taft-Hartley Act"), 61 Stat. 136, Congress concluded that certain activities engaged in by unions, particularly secondary boycotts and jurisdictional strikes,[12] were injurious to the national interest, and proscribed them as unfair labor practices. See 29 U.S.C. 158(b). In Section 10(*l*), 29 U.S.C. 160(*l*), Congress required that, whenever the Board's regional official determines that there is reasonable cause to believe that a charge alleging a violation of Section 8(b)(4), 29 U.S.C. 158(b)(4), the secondary boycott provision,[13] is true and that a complaint should issue, he "shall" petition the appropriate federal district court "for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter."[14] Congress accorded the district courts jurisdiction to grant such relief "notwithstanding any other provision of law." 29 U.S.C. 160(*l*). The latter clause freed the district courts from the restrictions

[12] See, *e.g.*, II Legislative History of the Labor-Management Relations Act, 1947 (1948) (hereafter "Leg. Hist.") 1012–1013, 93 Cong. Rec. 3838 (remarks of Sen. Taft); II Leg. Hist. 1055–1056, 93 Cong. Rec. 4131–4132 (remarks of Sen. Ellender).

[13] In 1959, Congress included in Section 10(*l*) the newly added prohibitions against recognitional picketing (Section 8(b)(7), 29 U.S.C. 158(b)(7)) and "hot cargo" agreements (Section 8(e), 29 U.S.C. 158(e)). 73 Stat. 519, 543–545.

[14] A similar provision, Section 10(j), 29 U.S.C. 160(j), was also added, giving the Board discretionary authority to petition the district court for temporary injunctive relief in respect to other types of unfair labor practices.

of the Norris-LaGuardia Act in respect to such injunctions; Congress reinforced this result by retaining Section 10(h) of the Wagner Act.[15]

When some members of Congress argued that Section 10(*l*) should be rejected because it represented a repudiation of the Norris-LaGuardia Act,[16] the measure's supporters pointed out that injunctions sought by a Board representative in a limited class of cases were quite different from the kinds of injunctions which led to passage of the Norris-LaGuardia Act.[17] The injunctive remedy authorized in Section 10(*l*) is not to vindicate private rights in an economic dispute, but rather to protect the public against certain carefully defined types of unfair labor practices. Thus, the Senate Report, commenting on Section 10(*l*) and the companion provision, Section 10(j), states:

> Time is usually of the essence in these matters, and consequently the relatively slow procedure of Board hearing and order, followed many months later by an enforcing decree of the circuit court of appeals, falls short of achieving the desired objectives—the

[15] See *Douds* v. *Local 294, Teamsters*, 75 F. Supp. 414, 418 (N.D. N.Y.); *Le Baron* v. *Printing Specialities, Local 388*, 75 F. Supp. 678, 681 (S.D. Cal.). See also *Bakery Sales Drivers Local Union 33* v. *Wagshal*, 333 U.S. 437, 442.

[16] See, *e.g.*, I Leg. Hist. 876, 93 Cong. Rec. 6296 (remarks of Rep. Javits); I Leg. Hist. 887, 83 Cong. Res. 6385 (remarks of Rep. Madden); II Leg. Hist. 1109–1113, 93 Cong. Rec. 4199–4202 (remarks of Sen. Pepper).

[17] See, *e.g.*, II Leg. Hist. 1364, 93 Cong Rec. 4843 (remarks of Sen. Smith); II Leg. Hist. 1544, 93 Cong. Rec. 6445–6446 (remarks of Sen. Taft).

> prompt elimination of the obstructions to the free flow of commerce and encouragement of the practice and procedure of free and private collective bargaining. Hence we have provided that *the Board, acting in the public interest and not in vindication of purely private rights,* may seek injunctive relief in the case of all types of unfair labor practices and that it shall also seek such relief in the case of strikes and boycotts defined as unfair labor practices. [S. Rep. No. 105, 80th Cong., 1st Sess. 8; I Leg. Hist. 414; emphasis added.]

In sum, Section 10(*l*) did not permit the indiscriminate use of injunctions to influence the outcome of private labor disputes at the behest of private parties. Rather, it authorized the Board to seek temporary injunctive relief in a narrowly limited class of cases, and it made this part of an overall scheme dominated by "elaborate administrative machinery for dealing with the whole field of labor relationships, a matter requiring specialized skill and experience, and [provisions] for the handling of unfair labor practices by an administrative agency equipped for the task." *Amazon Cotton Mill Co.* v. *Textile Workers Union,* 167 F. 2d 183, 187 (C.A. 4). See also *Amalgamated Ass'n of Motor Coach Employees* v. *Dixie Motor Coach Corp.*, 170 F. 2d 902, 907 (C.A. 8).[18] Congress could thus dispense with Norris-LaGuardia Act pro-

[18] As an additional protective measure, Section 10(*l*) forbids the issuance of *ex parte* temporary restraining orders except on a showing that "substantial and irreparable injury to the charging party will be unavoidable," and provides that any such *ex parte* orders will expire after five days.

tections in Section 10(*l*) without bringing back the abuses which led to enactment of that law in 1932.

Petitioners contend (Br. 37–38; see also Brief of United Mine Workers ("Mine Workers") 8–10) that the foregoing merely shows that Congress intended to free district courts of the restrictions of the Norris-LaGuardia Act (*e.g.,* 29 U.S.C. 104) at the stage of issuing the injunction, but not from its jury trial provision, Section 11.[19] However, Section 11 of the Norris-LaGuardia Act, by its terms, is applicable only to "cases arising under this Act," and, where the issuance of the underlying injunction is not governed by the Norris-LaGuardia Act, a contempt of that injunction cannot be a case "arising" under that Act. Thus, in *United States* v. *United Mine Workers, supra,* 330 U.S. 258, decided in March 1947, shortly before § 10(*l*) was enacted, the Court, after holding that the Norris-LaGuardia Act was inapplicable to an injunction sought by the United States against strike action by a union and its officials in coal mines seized by the United States, further held that the defendants, in a trial for criminal and civil contempt of that injunction, were not entitled to a jury under Section 11 of the Norris-LaGuardia Act. The Court explained that "[Section] 11 is not operative here, for it applies

[19] But petitioners later concede (Br. 41) that, from "the effective date of Taft-Hartley in late summer, 1947, until June 28, 1948, the effective date of the new § 3692, an alleged contemnor of a Taft-Hartley injunction would probably have been denied the jury trial guaranteed by § 11 of Norris-LaGuardia, because the injunction would not have been one arising under Norris-LaGuardia itself."

569-660—75——3

only to cases 'arising under this Act,' and we have already held that the restriction[s] upon injunctions imposed by the Act do not govern this case" (*id.* at 298, footnotes omitted).[20]

That Congress did indeed intend to free proceedings under Section 10(*l*) from the requirements of the Norris-LaGuardia Act not only at the injunction issuance stage, but also at the contempt stage, is confirmed by the debate over the Ball amendment. That proposal would have permitted private parties to seek federal court injunctions against jurisdictional strikes and secondary boycotts, but would have retained some of the Norris-LaGuardia Act protections, including the jury trial provision.[21] In pointing out the advantages

[20] Mine Workers (Br. 6, n. 5) attempt to distinguish *United Mine Workers*, *supra*, on the ground that there the Court held that the Norris-LaGuardia Act did not apply because the labor dispute was between the federal government and its employees, whereas Section 10(*l*) has merely freed the district courts of the restrictions of the Norris-LaGuardia Act in injunction suits brought by the Board. However, the Court's conclusion in *United Mine Workers* that Section 11 did not apply does not rest on any such distinction. Whatever the reason for the inapplicability, in both cases, since "the restriction[s] upon injunctions imposed by the Act do not govern this case," Section 11 "is not operative."

[21] The amendment was first proposed by a minority within the Senate Labor Committee in their supplemental statement to the Senate Report (I Leg. Hist. 461–462, S. Rep. No. 105, 80th Cong., 1st Sess. 55–56). It was then introduced in the Senate by Senator Ball on behalf of himself and three other Senators (II Leg. Hist. 1323–1324, 93 Cong. Rec. 4757). Although Senator Taft had signed the supplemental statement, he did not support the Ball amendment but rather introduced a substitute amendment, ultimately enacted as Section 303 of the Labor Management Relations Act, 29 U.S.C. 187. The latter provision

of his amendment over the provisions of Section 10(*l*) in the Committee bill, Senator Ball explained (II Leg. Hist. 1348, 93 Cong. Rec. 4834):

> * * * when the regional attorney of the NLRB seeks an injunction, the Norris-LaGuardia Act is completely suspended, as are section 6 and 20 of the Clayton Act. We do not go quite that far in our amendment. We simply provide that the Norris-LaGuardia Act shall not apply, with certain exceptions. We leave in effect the provisions of sections 11 and 12. Those are the sections which give an individual charged with contempt of court the right to a jury trial.

The Senate nevertheless rejected Senator Ball's proposed amendment, and Congress ultimately enacted Section 10(*l*), providing an injunctive remedy free from all Norris-LaGuardia Act restrictions.[22]

permits private parties injured by unlawful boycotts or jurisdictional strikes to sue for damages. II Leg. Hist. 1399–1400, 93 Cong. Rec 4874–4875.

[22] As noted (*supra*, p. 21) Congress also carried over without change Section 10(h), which exempts Board proceedings generally from the Norris-LaGuardia Act. Section 10(h), by citing "secs. 101–115" of that Act, renders all of its provisions inapplicable. See H. Conf. Rep. No. 510, 80th Cong., 1st Sess. 57, I Leg. Hist. 561. Contrary to petitioners' claim (Br. 29–35), the exemption in Section 10(h) is not limited to proceedings in the courts of appeals. Section 10(j) does not contain the language of exemption found in Section 10(*l*) ("notwithstanding any other provision of law"), yet proceedings under that section are exempt (by virtue of Section 10(h)) from the provisions of the Norris-LaGuardia Act to the same extent as proceedings under Section 10(*l*). *In re Union Nacional de Trabajadores*, 502 F. 2d 113 (C.A. 1).

1. In 1948, Section 11 of the Norris-LaGuardia Act was repealed, 62 Stat. 862, 866, and replaced by 18 U.S.C. 3692, 62 Stat. 844. This was done in the context of a revision of Title 18, U.S.C., entitled "Crimes and Criminal Procedure," in which some sections formerly in Title 18 were revised, and related federal laws in other titles were recodified in Title 18. Act of June 25, 1948, 62 Stat. 683. Some revisions consisted of minor changes in phrasing, while others were more substantive.[22a] Changes in laws effected by the 1948 recodification were thoroughly explained, as to both purpose and effect, in the series of "reviser's notes" printed in the House Report. See, *e.g.*, notes to 18 U.S.C. 1542–1545, 4202, H. Rep. 304, pp. A108, A187. The revisers were especially careful, where the coverage of a repealed provision was expanded, to explain why such a change was made. See, *e.g.*, note to 18 U.S.C. 4162, H. Rep. 304, p. A186. The reviser's note to 18 U.S.C. 3692, on the contrary, is quite brief and indicates no significant change in coverage. It states (H. Rep. 304, p. A176):

[22a] The House Committee on the Judiciary, which reported out the bill (H.R. 3190) that became Title 18 noted: "Revision, as distinguished from codification, meant the substitution of plain language for awkward terms, reconciliation of conflicting laws, omission of superseded sections, and consolidation of similar provisions." H. Rep. No. 304, 80th Cong., 1st Sess. 2 (hereafter "H. Rep. 304"). In specifically repealing Section 11 of the Norris-LaGuardia Act and certain other laws, Congress used a "method of specific repeal" which, as the House Committee explained, would "lift from the courts the onerous task of ferreting out implied repeals." *Id.* at 9.

Section 3692—Section Revised

> Based on section 111 of title 29, U.S.C., 1940 ed., Labor (Mar. 23, 1932, ch. 90, § 11, 47 Stat. 72).
>
> The phrase "or the District of Columbia arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute" was inserted and the reference to specific sections of the Norris-LaGuardia Act (sections 101–115 of title 29, U.S.C., 1940 ed.) were eliminated.

In this light, it is reasonable to conclude that, in enacting Section 3692 of Title 18, Congress intended to do no more than to place Section 11 of the Norris-LaGuardia Act in that title, along with other statutory provisions establishing procedures for contempt hearings.[23] And, for more than 25 years, this has been

[23] Thus, Section 3692 is preceded in Title 18 by Section 3691, which replaces Sections 21 and 24 of the Clayton Act, 38 Stat. 738, 739, which were specifically repealed, 62 Stat. 864. (Section 3691 provides for a jury trial in the narrow class of criminal contempt cases involving the wilful disobedience of an order by conduct which also constitutes a crime under federal or state law. See *Michaelson* v. *United States*, 266 U.S. 42.) Section 3692 is followed in Title 18 by Section 3693, which incorporates by reference Rule 42 of the Federal Rules of Criminal Procedure, governing the procedure to be followed in cases of criminal contempt, part of which relates to the disqualification of a judge to preside at a contempt hearing involving disrespect or criticism of him, a matter previously dealt with by Section 12 of the Norris-LaGuardia Act, which was also specifically repealed. 62 Stat. 866. See also Section 402 of Title 18.

the consistent conclusion of the courts which have considered the question. See *United States* v. *Robinson,* 449 F. 2d 925, 932 (C.A. 9); *Madden* v. *Grain Elevator, Flour and Feed Mill Workers,* 334 F. 2d 1014, 1020 (C.A. 7), certiorari denied, 379 U.S. 967; *Mitchell* v. *Barbee Lumber Co.,* 35 F.R.D. 544, 546 (S.D. Miss.). Thus, they have held that Section 3692 does not apply to contempt proceedings arising out of "injunctions provided for by or issued in aid of other federal statutes in the labor relations field * * *." *Brotherhood of Locomotive Firemen and Enginemen* v. *Bangor & Aroostook Railroad Co.,* 380 F. 2d 570, 580, n. 30 (C.A.D.C.) (Railway Labor Act). See also *In re Piccinini,* 35 F.R.D. 548, 551 (W.D. Pa.) (Fair Labor Standards Act). And, respecting the precise issue here, they have held that Section 3692 is inapplicable to contempt cases arising out of Section 10(*l*) injunction orders. *Madden* v. *Grain Elevator, Flour and Feed Mill Workers, supra; Schauffler* v. *Local 1291, International Longshoremen's Ass'n,* 189 F. Supp. 737, 742 (E.D. Pa.), reversed on other grounds, 292 F. 2d 182 (C.A. 3). See also *National Labor Relations Board* v. *Red Arrow Freight Lines,* 193 F. 2d 979, 980 (C.A. 5); *In Re Winn-Dixie Stores,* 386 F. 2d 309, 312, 316 (C.A. 5).

2. However, petitioners (Br. 38–40), adopting the view recently enunciated by the First Circuit in *In re Union Nacional de Trabajadores, supra,* 502 F. 2d 113,[24] contend that this long established construction of

[24] Although that case involved a criminal contempt of an injunction issued under Section 10(j) of the National Labor Relations Act, while the injunctions here were issued under Section

Section 3692 is erroneous because it fails to give effect to the plain language of that section. Petitioners note that, by its terms, Section 3692 is applicable "In *all* cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders *in any case* involving or growing out of a labor dispute" (emphasis added). The argument therefore runs that, since the contempt here arises under the National Labor Relations Act, a law "of the United States governing the issuance of injunctions or restraining orders," and since the case grew out of a "labor dispute", Section 3692 requires a jury trial.[25] The argument is unsound for several reasons.

a. The change in wording from the introductory clause of Section 11 of the Norris-LaGuardia Act[26] is best explained as simply a means of referring to the subject matter covered by the Norris-LaGuardia Act. When Section 11 was removed from that Act and inserted into Title 18, changes in phraseology were needed to relate it to the kinds of situations covered by the Norris-LaGuardia Act. The preamble to the Norris-LaGuardia Act, setting the theme of its succeeding provisions, recites (47 Stat. 70) "That no court of the United States * * * shall have jurisdiction

10(*l*), the issue respecting the application of 18 U.S.C. 3692 is the same for both types of injunctions (see n. 23, *supra*).

[25] But petitioners concede (Br. 46) that, since Section 3692 is included in Title 18, "Crimes and Criminal Procedure," it is applicable only to criminal, and not civil, contempts. See also *In re Union Nacional de Trabajadores, supra,* 502 F. 2d at 119–120.

[26] The introductory clause of Section 11 of the Norris-LaGuardia Act read "In all cases arising under this Act * * *."

to issue any restraining order or temporary or permanent injunction in a case involving or gowing out of a labor dispute," except in the narrowly defined class of cases thereafter described. And Sections 4, 5, 7, 9, and 10 of the Norris-LaGuardia Act repetitively define their scope in terms of injunctive relief in a "case involving or growing out of any labor dispute". Thus the Norris-LaGuardia Act is pre-eminently a law "of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute." And the reference in Section 3692 of Title 18 to "cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute" can reasonably be construed, not as an enlargement of that provision, but merely as an effort to confine it to its Norris-LaGuardia Act jurisdictional touchstone.

b. Unlike the Norris-LaGuardia Act, the National Labor Relations Act is not essentially a law "governing the issuance of injunctions or restraining orders" in cases "involving or growing out of a labor dispute." It is concerned with preventing unfair labor practices, and the power conferred on the Board to obtain an injunction is merely incidental to achieving that objective.[27] While an unfair labor practice often

[27] Section 10(a) of the National Labor Relations Act, setting the theme of its succeeding provisions, empowers the Board "to prevent any person from engaging in any unfair labor practice * * * affecting commerce." Subsections (b), (c), (e), (f), (j), (k), and (*l*) of Section 10 thereafter repetitively define their scope in terms of an "unfair labor practice" in which

arises out of a labor dispute, the two are not coextensive; some conduct which constitutes a labor dispute may not constitute an unfair labor practice, and vice versa. See *National Labor Relations Board* v. *Mackay Radio Co.*, 304 U.S. 333, 344 ("The argument confuses a current labor dispute with an unfair labor practice defined in § 8 of the Act").[28] Moreover, when district courts act on petitions filed by the Board pursuant to Sections 10(j) or 10(*l*) of the Act, they are not engaging in the kind of *ad hoc* intervention in labor disputes which led to passage of the Norris-LaGuardia Act (see *supra*, pp. 16–17, 21–23).[29] Rather, they are acting within a framework established by Congress to prevent the commission of acts defined as unfair labor practices, without regard to whether those acts did or did not arise out of a labor dispute.[30]

a person "has engaged" or is "engaging," and the place where it has "occurred" or is "alleged to have occurred."

[28] To be sure, the National Labor Relations Act incorporates, in Section 2(9), 29 U.S.C. 152(9), the same definition of a labor dispute which is embodied in the Norris-LaGuardia Act, 29 U.S.C. 113(c). However, Congress' purpose in doing so was not to regulate the dispute itself, but to insure that the Board would have full power to reach practices inimical to the public welfare which might emanate therefrom. See S. Rep. No. 573, 74th Cong., 1st Sess. 6–7.

[29] Cf. *Virginian Railway Co.* v. *System Federation No. 40*, 300 U.S. 515, 563.

[30] The Court of Appeals for the First Circuit attempted to "distinguish cases arising out of unfair labor practices from those arising under statutes [such as the Fair Labor Standards Act, 52 Stat. 1060, involved in *Barbee* and *Piccinini*, *supra*] vesting the government with authority to enforce compliance with more sharply defined federal standards which are not subject to bargaining" *In re Union Nacional de Trabajadores*, *supra*,

Accordingly, since the injunctions here were issued to check probable unfair labor practices, the contempt of those injunctions is more accurately viewed as arising out of unfair labor practices rather than a labor dispute.

c. At minimum, we submit, the foregoing analysis indicates that the "plain meaning" of 18 U.S.C. 3692—i.e., whether it encompasses contempts of injunctions issued under the National Labor Relations Act—is "sufficiently doubtful to warrant * * * resort to extrinsic aids to determine the intent of Congress, which, of course, is the controlling consideration * * *." *Cass* v. *United States,* 417 U.S. 72, 77. That Congress did not intend to expand Section 3692 of Title 18 beyond the scope of Section 11 of the Norris-LaGuardia Act is shown by the fact that, in the 1947 amendments to the National Labor Relations Act, the 80th Congress, after extensive consideration of the question, explicitly provided for the issuance of certain injunctions free of Norris-LaGuardia Act restrictions, including its jury trial provision (see *supra,* pp. 24–25), and the following year the same Congress transferred that jury trial provision, with the minor changes indicated (see *supra,* pp. 26–27), to Title 18 without indicating any intent to modify the scheme it had so laboriously worked out in the 1947 amendments.

---

502 F. 2d at 118, n. 4; see also Pet. Br. 27–28). There is no warrant for such a distinction. Both types of statutes fall outside of Section 3692 because the injunctive power which they confer is utilized to further an express statutory policy, and not to resolve a private dispute between an employer and employees, or an employer and a labor organization.

3. There is no basis for petitioners' assumption (Br. 40–43) that Congress made Section 3692 applicable to all cases involving or growing out of a labor dispute to overrule this Court's holding in *United Mine Workers, supra,* that, since the Norris-LaGuardia Act did not bar issuance of the injunction, the jury trial provision of that Act was likewise inapplicable. The *United Mine Workers* case was decided on March 6, 1947. At that time the recodification of Title 18 was long underway, and the decision to transfer Section 11 to Title 18—in substantially the form finally enacted—had already been made. See H.R. 2200, 79th Cong., 1st Sess.;[31] H. Rep. 152, 79th Cong., 1st Sess., p. A164.

Moreover, Title 18 first passed the House on May 12, 1947 (93 Cong. Rec. 5049) and it did not finally pass both the Senate and the House until June 18, 1948 (94 Cong. Rec. 8721–8722, 8864–8865. There was thus ample opportunity for Congress, if it so desired, to indicate its disapproval of the *United Mine Workers* jury trial holding. Finally, since Title 18 was not enacted until more than one year after the Senate had rejected the Ball amendment which would have made Section 11 of the Norris-LaGuardia Act applicable to proceedings under the National Labor

---

[31] H.R. 2200 provided in pertinent part:

"In all cases of contempt in any court of the United States or the District of Columbia arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed. * * *"

Relations Act (*supra,* p. 25),[32] there was also ample opportunity for Congress, if it had desired to reverse that action (see *In re Union Nacional de Trabajadores, supra,* 502 F. 2d at 118–119; National Lawyers Guild ("Guild") Brief 15), to so indicate. Yet, neither in the House or Senate Reports on Title 18, nor in the legislative debates thereon, is there any intimation that Section 3692 was intended to overrule either *United Mine Workers* or the decision made in respect to the applicability of the Norris-LaGuardia Act to Board injunctions.[33] Congress' sole comment on Section 3692 consists of the brief reviser's note set forth, *supra,* p. 27.[34]

4. That Congress' change in wording, between Section 11 of the Norris-LaGuardia Act and Section 3692

[32] The Ball amendment was rejected on May 9, 1947. II Leg. His. 1370, 93 Cong. Rec. 4847.

[33] The Senate Report, S. Rep. No. 1620, 80th Cong., 2d Sess., which was printed in June 1948, included some additional "Amendments and Explanations" reflecting, in part, "new legislation enacted since passage of the bill by the House" (*id.* at 2). But nothing is said about the injunction provisions of the Labor-Management Relations Act of 1947. (Note, however, the incorporation of "section 304 of the Labor-Management Relations Act, 1947, * * * prohibiting campaign contributions * * * by labor unions." *Id.* at 3.)

[34] The question of statutory interpretation in the present case differs significantly from that in *Tinder* v. *United States*, 345 U.S. 565, cited by the Guild (Br. 19, n. 18). In *Tinder*, this Court, construing a provision of the federal criminal code revised in 1948, was able to establish its meaning by reference to the reviser's note, since it fully explained the change made in the provision. 345 U.S. at 568–569, n. 2. (For a similar explanation of the *Tinder* holding, see the "Memorandum Re Tinder v. U.S." placed in the Congressional Record by Representative Celler in the course of the debate on the jury trial provision of the Civil Rights Act of 1957 (discussed *infra*), 103 Cong. Rec. 8684).

of Title 18, signifies no substantive change is confirmed by the debates on the jury trial provision of the Civil Rights Act of 1957 (Sec. 151, 71 Stat. 638, 42 U.S.C. 1995). At that time, Representative Celler, who had been chairman of the subcommittee of the House Committee on the Judiciary which had conducted hearings on the recodification of federal laws in Title 18,[35] put into the record a memorandum he described as "a complete and smothering answer" to the suggestion by Representative Smith that Section 3692 applied to proceedings under the National Labor Relations Act, as amended in 1947 (103 Cong. Rec. 8684–8687). That memorandum concluded that Congress did not, in Section 3692, restore the applicability of a jury trial provision to proceedings exempted from it by the same Congress just a year before (103 Cong. Rec. 8686–8687).[36]

II. A JURY TRIAL WAS NOT REQUIRED BY THE CONSTITUTION IN ORDER TO SUBJECT THE PETITIONER UNION TO THE FINE FOR CRIMINAL CONTEMPT IMPOSED IN THIS CASE.

A. JURY TRIALS ARE NOT CONSTITUTIONALLY REQUIRED IN CRIMINAL CONTEMPT PROCEEDINGS AGAINST UNIONS OR CORPORATIONS, WHICH CANNOT BE IMPRISONED.

Petitioner Local 70, but not petitioner Muniz, claims a constitutional right to a jury trial of the criminal contempt charge.[37] While the last decade has seen a

[35] See 92 Cong. Rec. 9122.

[36] See, also, 103 Cong. Rec. 8688–8691 (remarks of Rep. Keating); 103 Cong. Rec. 12842–12843 (letter from Attorney General Brownell).

[37] Since petitioner Muniz was placed on probation for one year, without being subject to a fine or imprisonment, he does

rapid development of the law regarding the right to jury trials of individual criminal contemnors who are subject to terms of imprisonment, none of these recent cases resolves the questions presented here. In this case the criminal contemnor is an unincorporated association which by its nature is not subject to imprisonment, but may only be fined. The questions are whether organizations subject merely to fines are ever entitled to jury trials in criminal contempt proceedings, and, if so, whether the fine imposed on Local 70 was such as to require a jury trial.

In our view neither Art. III, Section 2, of the Constitution nor the Sixth Amendment requires jury trials of criminal contempt proceedings where personal liberty is not at stake. Alternatively, we submit that the $10,000 fine imposed on petitioner Local 70 was not sufficiently serious to require a jury trial. Elaboration of these contentions requires a brief review of recent cases involving the right of natural persons to jury trial, particularly for criminal contempts.

As recently as 1958, in *Green* v. *United States,* 356 U.S. 165, 183, this Court, citing "a long and unbroken line of decisions," affirmed unequivocally that "criminal contempts are not subject to jury trial as a matter of constitutional right" (footnote omitted). While the Court noted that contempt proceedings have traditionally been surrounded with many of the protections available in a criminal trial,[35] the Court concluded that

not claim a jury trial as a matter of constitutional right. See *Frank* v. *United States*, 395 U.S. 147.

[35] The Court cited (356 U.S. at 184, n. 15):

"*Cooke* v. *United States*, 267 U.S. 517, 537 (compulsory process and assistance of counsel); *Gompers* v. *United States*, 233 U.S. 604, 611–612 (benefit of a statute of limitations generally governing crimes); *Gompers* v. *Bucks Stove & Range Co.*, 221 U.S. 418, 444 (proof of guilt beyond a reasonable doubt and freedom from compulsion to testify)."

such contempts "are neither 'crimes' nor 'criminal prosecutions' for the purpose of jury trial within the meaning of Art. III, § 2, and the Sixth Amendment" 356 U.S. at 184–185 (footnote omitted). But *Green* was not to remain the law for long and, even at that time, was questioned in a dissent by Mr. Justice Black (356 U.S. at 193) striking the note of concern that ultimately was to persuade a majority of the Court: the risk of abuse in permitting a judge to be the "judge of his own cause" where the personal liberty of the alleged contemnor is at stake. Thus, for the dissenters in *Green,* it was the possibility of "unconditional imprisonment" which brought the jury trial provisions of the Constitution into play. Distinguishing imprisonment for civil contempts, "where the defendant carries the keys to freedom," Justice Black wrote (356 U.S. 197–198):

> In my judgment the distinction between conditional confinement to compel future performance and unconditional imprisonment designed to punish past transgressions is crucial, analytically, as well as historically, in determining the permissible mode of trial under the Constitution.

Similarly, he observed (356 U.S. at 209) that "[a] great concern for protecting individual liberty from even the possibility of irresponsible official action was one of the momentous forces which led to the Bill of Rights."

The rule that "criminal contempts are not subject to jury trial as a matter of constitutional right" was reaffirmed in 1964 in *United States* v. *Barnett,* 376 U.S. 681, 692. There, however, the Court added the *dictum* that "[s]ome members of the Court are of the view that, without regard to the seriousness of the offense, punishment by summary trial without a jury would be constitutionally limited to that penalty provided for petty offenses" (376 U.S. at 695, n. 12). In invoking the concept of petty offenses, the Court brought to bear on the criminal contempt question a separate line of cases dealing with the right to jury trial of crimes generally. This area too had been characterized by a continuing concern over serious interferences with personal liberty without the protection of a jury. In *Callan* v. *Wilson,* 127 U.S. 540, 549, the Court rejected the notion that the jury trial guarantee might apply only to felonies, ruling instead that "[i]t embraces as well some classes of misdemeanors, the punishment of which involves or may involve the deprivation of the liberty of the citizen."

Thus the debate concerning the proper characterization of criminal contempt, as well as the proper categorization of offenses generally, for the purpose of the jury trial guarantees was informed by a single overriding concern: the risk of arbitrary deprivation of personal liberty. It is not surprising, then, that the Court dealt decisively with both issues on the same day. In *Duncan* v. *Louisiana,* 391 U.S. 145, the Court held that the due process clause of the Fourteenth Amendment extended to the states the Sixth Amend-

ment's right to jury trial of "serious" offenses, and that a crime for which the legislature had authorized a maximum penalty of two years' imprisonment was "serious". Applying this holding in *Bloom* v. *Illinois,* 391 U.S. 194, decided the same day as *Duncan,* the Court held that a jury trial was constitutionally required for a criminal contempt that resulted in a sentence of two years' imprisonment.

Both cases again expressed the abiding concern over arbitrary interference with personal liberty. Thus *Duncan* (391 U. S. at 156) spoke of "a reluctance to entrust plenary powers over the life and liberty of the citizen to one judge or to a group of judges," while *Bloom* (391 U.S. at 202) "recognized the potential for abuse in exercising the summary power to imprison for contempt—it is an 'arbitrary' power which is 'liable to abuse' *Ex parte Terry,* 128 U.S. 289, 313 (1888)."

While the two lines of authority which came together in *Duncan* and *Bloom* may thus dictate similar results for contempt and other crimes when the liberty interest is at stake, it does not follow that the results should be the same when that interest is not implicated. Contempt has historically been considered *"sui generis"* (*Cheff* v. *Schnackenburg,* 384 U.S. 373, 380). Over the years contempt has been "surrounded with many of the protections available in a criminal trial" (*Green* v. *United States, supra,* 356 U.S. at 184), now including the jury trial protection where serious interferences with personal liberty are threatened (*Bloom, supra*). Yet criminal contempt is

still recognized as an offense having "unique" aspects (*Duncan, supra,* 391 U.S. at 162, n. 35). We submit that neither history nor policy requires jury trials of criminal contempts by associations or corporations which, by their nature, may not be imprisoned, but only fined.

The power of the courts to deal summarily with contempts was acknowledged by this Court for 150 years. At the time *Green* was decided, in 1958, Mr. Justice Frankfurter was able to "call the roll" of "every Justice who sat on the Courts since 1874" (with two exceptions) as supporting this power (356 U.S. at 192 and 192, n. 3, Frankfurter, J., concurring). The basis of this power has been articulated in the numerous cases cited in *Green* (356 U.S. at 183, n. 14) and discussed in *Barnett* (376 U.S. at 694–699); it was perhaps most succinctly stated by Mr. Justice Brewer in *In re Debs* (158 U.S. 564, 594–595):

> [T]he power of a court to make an order carries with it the equal power to punish for a disobedience of that order, and the inquiry as to the question of disobedience has been, from time immemorial, the special function of the court. And this is no technical rule. In order that a court may compel obedience to its orders it must have the right to inquire whether there has been any disobedience thereof. To submit the question of disobedience to another tribunal, be it a jury or another court, would operate to deprive the proceeding of half its efficiency.

It may be appropriate to sacrifice "half [the] * * * efficiency" of the contempt power when it threatens to become an arbitrary interference with the liberty

interest. But when the contemnor is an artificial entity or association—which may not be imprisoned—there is no need further to compromise this historic power.

The jury is not a crucially important safeguard when the criminal contemnor is an artificial entity not subject to imprisonment. Manifestly it has no "peers" which can sit in judgment upon it. See *Duncan, supra,* 391 U.S. at 156. And a bench trial of such a cause obviously is not inherently unfair, since it is constitutionally adequate in "petty" contempt proceedings against individuals. Indeed, when this Court ruled that counsel must be provided whenever *any* term of imprisonment was imposed, it distinguished the cases permitting non-jury trials where the potential punishment was imprisonment for six months or less, noting that "the right to trial by jury has a different genealogy and is brigaded with a system of trial to a judge alone." *Argersinger* v. *Hamlin,* 407 U.S. 25, 29.[39] And, significantly, whatever the fine imposed, it is subject to appellate review. See, *e.g., United States* v. *United Mine Workers, supra,* 330 U.S. at 304–305.

Finally, this Court has long recognized the power of courts to impose fines—even substantial fines—upon unions and corporations without the interposition of a jury. Thus in *United States* v. *United Mine Work-*

---

[39] *Argersinger* again demonstrates the Court's fundamental concern with protecting against arbitrary interference with personal liberty. Even though uncounseled trials arguably present a greater risk of unfairness than summary (non-jury) trials, the Court expressly left open the possibility that uncounseled trials are nevertheless constitutionally permissible where the penalty is merely a fine. See 407 U.S. at 37, 40.

ers, supra, 330 U.S. at 304–305, the Court sustained the imposition, without a jury trial, of a fine of $700,000 against the union, to be increased to $3,500,000, unless it complied within five days with the outstanding injunction. Since that time on numerous occasions this Court has declined to review criminal contempt proceedings in which substantial fines were imposed.[40] Perhaps the most significant of these was the Court's refusal to review the $100,000 fine imposed on Holland Furnace Co. while undertaking to review the claim of its president, Cheff, that a jury was constitutionally required before he could be imprisoned for six months for contempt. See *Cheff* v. *Schnackenberg,* 384 U.S. 373, 375.[41]

For these reasons we submit that the right to trial by jury should not be extended to unincorporated associations and corporations in criminal contempt proceedings where the only possible penalty is a fine.

[40] See *In re Local 825, Operating Engineers,* 57 LRRM 2143 (C.A. 3), certiorari denied, 379 U.S. 934 (union fined $15,000 and its business manager $5,000); *In re Holland Furnace Co.,* 341 F. 2d 548 (C.A. 7), certiorari denied, 381 U.S. 924 (company of which Cheff was president fined $100,000); *In re Jersey City Education Ass'n,* 115 N.J. Super. 42, 278 A. 2d 206, 213–215, certiorari denied, 404 U.S. 948 (union fined $10,000); *In re Fair Lawn Education Ass'n,* 63 N.J. 112, 305 A. 2d 72, certiorari denied, 414 U.S. 855 (union with 347 members fined $17,350). See also *Rankin* v. *Shanker,* 23 N.Y. 2d 111, 242 N.E. 2d 802, 807–808, stay denied, 393 U.S. 930 (union subject to fine of $10,000 per day).

[41] The corporation, however, did not explicitly raise the jury trial issue in its petition. See petition for a writ of certiorari, *Holland Furnace Co.* v. *Schnackenberg,* No. 972, O. T. 1965,

B. IN ANY EVENT THE FINE IMPOSED ON THE PETITIONER UNION WAS NOT SUCH AS TO MAKE THE CONTEMPT "SERIOUS"

1. The distinction between "petty" and "serious" offenses

We have seen that *Duncan* v. *Louisiana, supra,* interpreted the due process clause of the Fourteenth Amendment to extend to the states the Sixth Amendment right to jury trial for other than "petty" crimes. While *Bloom* v. *Illinois, supra,* held only that a contemnor sentenced to two years' imprisonment was entitled to a jury trial, the Court's discussion did not appear to treat criminal contempt differently than other crimes. Thus the Court stated (391 U.S. at 199–200), "The Constitution guarantees the right to jury trial in state court prosecutions for contempt just as it does for other crimes". While, in our view, this discussion in *Bloom,* which involved only a contempt proceeding against an individual, does not preclude our submission, *supra,* that juries are not required for contempt proceedings against organizations subject merely to a fine, we submit that, in any event, the $10,000 fine imposed here[42] was not so substantial as to make the contempt other than "petty".

[42] As Noted in the Statement (p. 10, *supra*), the district court imposed a fine of $25,000 on each union adjudged in criminal contempt, but $15,000 of this amount was suspended for one year and would be remitted upon the court's determination that the union had not further violated the injunctions within that period. In these circumstances, as petitioner Union apparently concedes (Br. 9, 17), the unconditional fine of $10,000 is the operative penalty. See *Shillitani* v. *United States,* 384 U.S. 364, 368–370, and cases there cited.

Petitioners argue that any fine of more than $500 makes a contempt "serious" for the purposes of the jury trial provisions, relying on 18 U.S.C. 1(3) which defines as "petty" an offense "the penalty for which does not exceed imprisonment for a period of six months or a fine of not more than $500, or both." Petitioners correctly note that the cases fixing the constitutional line between "petty" and "serious" crime at six months' imprisonment have cited 18 U.S.C. 1(3). *Cheff* v. *Schnackenberg, supra,* 384 U.S. at 379; *Duncan* v. *Louisiana, supra,* 391 U.S. at 161. But it is evident that the Court did not simply rely on this statute—which Congress could amend at any time—in determining what constituted a "serious" offense. Thus, in *Duncan* the Court based its conclusion that "a crime punishable by two years in prison" is serious, and not petty, "on past and contemporary standards in this country." *Duncan* v. *Louisiana, supra,* 391 U.S. at 162. The Court noted (*id.* at 161):

> In the federal system, petty offenses are defined as those punishable by no more than six months in prison and a $500 fine [citing 18 U.S.C. 1]. In 49 of the 50 States crimes subject to trial without a jury * * * are punishable by no more than one year in jail [footnote omitted]. Moreover, in the late 18th century in America crimes triable without a jury were for the most part punishable by no more than a six-month prison term * * *.

And in *Baldwin* v. *New York,* 399 U.S. 66, 69, 70–73, the Court concluded that "no offense can be deemed 'petty' for purposes of the right to trial by jury where

imprisonment for more than six months is authorized," because, "with a few exceptions, crimes triable without a jury in the American States since the late 18th century were also generally punishable by no more than a six-month prison term," and because the existing laws of the fifty states—the "near-uniform judgment of the Nation"—reflected the same view regarding when a term of imprisonment is so long that it may be imposed only if a jury trial is made available.

2. 18 U.S.C. 1(3) is an inadequate basis for determining whether a fine is "petty"

18 U.S.C. 1(3) was not addressed to the problem here; the relevant "gauges" of community judgments regarding what is a serious fine indicate that a more flexible standard is appropriate.

In 1930, Congress, in defining petty offense for purposes of the provision now codified as 18 U.S.C. 1, set the punishment limit at six months' imprisonment and/or a fine of $500 (46 Stat. 1029). In arriving at this figure, Congress intended mainly to unclog criminal calendars by eliminating the need for grand jury indictment for less serious offenses. See H. Rep. No. 1699, 71st Cong., 2d Sess. 3 ("H. Rep. 1699"). The bill became law over strenuous objections that, to the ordinary individual, six months' confinement and a fine of $500 are hardly petty, and that fines of $100 or less would be a more appropriate standard. 72 Cong. Rec. 9993; H. Rep. 1699, pt. 2. Nothing in the history of the provision suggests that Congress believed that a $500 fine would have a serious

impact on corporations or other collective bodies.[43] The amount of the fine was left unchanged in the 1948 recodification, and there was no reconsideration of the appropriateness of that amount. See H. Rep. 304, *supra;* 93 Cong. Rec. 5048–5049.

Numerous statutes provide for the imposition of civil penalties in excess of $500 through an administrative process which excludes jury trials. Thus, under a section of the Immigration and Nationality Act, 8 U.S.C. 1321, 66 Stat. 226, the Attorney General may impose a fine of $1,000 per violation on any person, owner, master, officer, or agent failing to comply with provisions relating to the unauthorized landing of aliens. Under the Marine Mammal Protection Act of 1972, 16 U.S.C. (Supp. II) 1375(a), 86 Stat. 1036, the Secretary of the Interior may assess a civil penalty of not more than $10,000 for each violation of Subchapter I of the Act. And, under the Occupational Safety and Health Act, 29 U.S.C. 651, 666(a), 84 Stat. 1590, 1606, an employer who has wilfully or repeatedly violated designated sections of the Act may be assessed a civil penalty of not more than $10,000 for each violation. Another subdivision of this section provides that any employer cited for a violation of the designated sections where the violation has been "specifically determined not to be of a serious nature, *may* be assessed

[43] Of course, Congress could not have been focusing on gradations of contempt since, until at least 1964, when this Court decided *United States* v. *Barnett*, *supra*, it was virtually unquestioned that contempt proceedings were *sui generis* and hence not classifiable as either crimes or civil wrongs. See *Green* v. *United States*, 356 U.S. 165.

a civil penalty of up to $1,000 for each such violation" (29 U.S.C. 666(c)), whereas an employer cited for a "serious violation * * * *shall* be assessed a civil penalty of up to $1,000 for each such violation" (29 U.S.C. 666(b)) (emphasis added). Although civil penalties differ from criminal sanctions by the degree of opprobrium they carry with them, they are nevertheless indicative of the severity of monetary penalties which Congress is willing to see imposed in proceedings which do not possess all of the traditional attributes of trials of serious criminal offenses."[44]

It is also relevant that, in some statutes, Congress has increased penalties—both civil and criminal—as the impact of the original penalties has weakened as a result of inflation and the growth of the regulated business entities. For example, violations of the fuel additives provisions of the Air Quality Act of 1967, 42 U.S.C. 1857f–6c, 81 Stat. 502, were originally punishable by a civil penalty of $1,000 for each violation, but the penalty was raised in the Clean Air Act Amendments of 1970, 84 Stat. 1700, to $10,000 for each viola-

[44] None of the foregoing statutory provisions places any ceiling on the total amount in penalties which can be imposed for more than one violation. Moreover, under one of the criminal provisions of the Occupational Safety and Health Act, 29 U.S.C. 666(a) (under which violations would be prosecuted in court), a willful violation of designated standards, rules, orders, or regulations, where the violation is shown to have caused the death of an employee, is punishable by a fine of not more than $10,000 or by imprisonment of not more than six months (29 U.S.C. 666(e)). This certainly suggests that six months' imprisonment and a $500 fine are not a fixed or inevitable legislative equation.

569-660—75——5

tion. Similarly, fines for criminal violations of the Sherman Act, 15 U.S.C. 1, *et seq.*, 26 Stat. 209, were raised from $5,000 to $50,000 in 1955 (69 Stat. 282), and, in 1974, from $50,000 to $1,000,000 for a corporation and $100,000 for "any other person" (Antitrust Procedures and Penalties Act, Pub. L. No. 93–528, Section 3, 88 Stat. 1708.[45]

The most recent changes in the Sherman Act also reflect a disposition on the part of Congress to treat collective bodies such as corporations or organizations differently from natural persons where fines are concerned. The same attitude can be seen in state statutes and case law. Thus, for example, Illinois has created a special class of offenses designated "business offense[s]," which are not subject to limitations set in the general schedule of authorized fines, but rather are punishable by whatever fine the legislature sets in the statute defining the particular business offense. Ill. Ann. Stat. ch. 38 § 1005–9–1(5) (Smith-Hurd, 1973). The annotator's comment on this section indicates that this exception to the fine schedule is made because imprisonment is generally not a possible punishment for these offenses. Despite the absence of any general limitation on fines, a business offense is defined as "a *petty offense* for which the fine is in excess of $500." *Id.* § 1005–1–2 (emphasis added)."

[45] In this same section of the 1974 amendment, these violations were raised from misdemeanors to felonies.

[46] See also N.Y. Penal Law § 80.10 (McKinney, 1967), setting out a special schedule of fines for corporations. In this schedule, unlawful conduct constituting a Class B misdemeanor, for which a natural person could be imprisoned for no more than three months, is punishable by a fine of not more than $2,000. Alternatively, for any gradation of offense, a higher fine not exceeding double the gain from commission of the offense may be imposed. This section also states that fines, many of them higher, specified in other titles of New York law are not subject to the schedule.

The logic of this distinction between corporations and natural persons applies also to labor organizations. In both cases, since the fine is in reality borne by a number of persons—whether stockholders or members—it is reasonable to measure its "seriousness" according to a different scale than might be appropriate for an individual offender. Thus, in some recent state cases involving criminal contempts by labor organizations, the courts have placed the fines imposed in perspective by explaining their impact on individual members. See *In Re Fair Lawn Education Association,* 63 N.J. 112, 305 A. 2d 72, 78, certiorari denied, 414 U.S. 855 (fine of $17,350 levied against teachers' union described as "$50 per member"); *Rankin* v. *Shanker,* 23 N.Y. 2d 111, 120, 242 N.E. 2d 802, 808, stay denied, 393 U.S. 930 (fine of $10,000 per day or 1/52 of annual membership dues, whichever is the lesser, to which union was potentially subject, described as "actually small, amounting, at most, to no more than a member's weekly union dues for each day of the contempt").

The foregoing discussion demonstrates, we submit, that the definition of a petty offense in 18 U.S.C. 1(3) cannot be taken as the expression of a national consensus on what constitutes a "serious" fine in any criminal case, including criminal contempts—and cer-

tainly not when the impact of the fine is dispersed among a large number of individual shareholders or members of the entity fined. Congress and the states have taken a flexible approach toward determining amounts of fines for given offenses, since the resources of offenders and changes in economic conditions all affect the impact that such fines will have. Nowhere is this approach more apparent than in the *Final Report of the National Commission on Reform of Federal Criminal Laws* (hereafter "Report"), containing a proposed new federal criminal code which would replace most of Title 18 and comments on the proposed new provisions.[47] The Commission would classify criminal contempt as a "Class B misdemeanor," punishable in the case of individuals by imprisonment for no more than six months (Report, p. 120, § 1341(2)).[48] That the Commission's intent is to avoid jury trials in criminal contempt cases is shown by the Comment, which states: "A six-month prison term, held by the Supreme Court to be the maximum which can be imposed without a jury trial, is set as the maximum for all cases" (Report, p. 121). The

[47] The Report is printed in *Hearings on Reform of the Federal Criminal Laws before the Subcommittee on Criminal Laws and Procedures of the Senate Committee on the Judiciary*, 92d Cong., 1st Sess., pt. 1, at 129, *et seq.* (1971). The Report supersedes the Commission's study draft cited by petitioners (Br. 19, n. 19).

[48] This limitation on punishment is expressly set forth in the section on "Criminal Contempt and Related Offenses"; it thus supersedes the 30-day limitation on imprisonment for Class B misdemeanors set forth in the schedule of authorized terms of imprisonment, contained in a different section of the proposed code (Report, p. 284, § 3201(1)).

criminal contempt section also provides that, "if the criminal contempt is disobedience of or resistance to a court's lawful temporary restraining order or preliminary or final injunction or other final order, other than for the payment of money, the defendant may be sentenced to pay a fine in any amount deemed just by the court" (Report, p. 120, § 1341(2)).

Although the existence of the special fine provision for criminal contempt makes the general section on "Authorized Fines" (Report, p. 295, § 3301) inapplicable, it is nevertheless useful to look at that section to see what the Commission regarded as appropriate sanctions for petty offenses generally. According to the schedule in the section, the authorized maximum fine for a Class B misdemeanor would be $500 or, in certain cases, a fine imposed under an alternative provision, as follows:

> (2) Alternative Measure. In lieu of a fine imposed under subsection (1), a person who has been convicted of an offense through which he derived pecuniary gain or by which he caused personal injury or property damage or loss may be sentenced to a fine which does not exceed twice the gain so derived or twice the loss caused to the victim. [Report, p. 295, § 3301(2)].[49]

[49] Cf. A.B.A. Special Committee on Minimum Standards for Criminal Justice, *Standards Relating to Sentencing Alternatives and Procedures* (Approved Draft, 1968) p. 118, § 2.7(f), and Commentary, pp. 127–129 (recommending use of a "flexible index" rather than a fixed dollar amount in certain classes of offenses; *e.g.*, "fine relative to sales, profits, or net annual income might be appropriate" in cases "such as business or antitrust offenses, in order to assure a reasonably even impact of the fine on defendants of variant means").

The Comment on this section notes that, "[b]ecause the number of sanctions which can be used against a convicted organization is limited, it might be desirable to set a separate and higher fine limit for such offenders, for use when subsection (2) is unsatisfactory" (Report, p. 295).[50] The Commission also proposes that, in determining the amount of any fine, a court should take into consideration "the burden that payment will impose in view of the financial resources of the defendant" (Report, p. 295, § 3302(1)). In sum, the $500 authorized maximum fine for Class B misdemeanors—which, measured by the maximum term of imprisonment, are clearly petty offenses—would not be mechanically applied in every case without regard for the economic resources of the defendant or the amount of economic damage flowing from his offense.

3. The fine imposed on the union in the present case was not so serious as to require a jury trial

In light of the foregoing evidence that current standards for setting monetary penalties are generally flexible with regard to petty offenses, a fixed sum, such as the $500 maximum in 18 U.S.C. 1(3), should not be adopted as the constitutional dividing line between petty and serious offenses. Rather, the severity of the fine should be measured by such factors as the economic resources of the defendant and the amount of economic damage flowing from his offense. At the

[50] Cf. *Standards Relating to Sentencing Alternatives and Procedures*, *supra*, p. 118, § 2.7(g), and p. 129 (recommending consideration of special schedule of fines for offenses committed by corporations).

least, we submit, this approach should be used when the fine is imposed on an artificial entity or association so that its impact is, realistically, divided among a number of individuals. Cf. *United Steelworkers* v. *R. H. Bouligny, Inc.*, 382 U.S. 145.

Tested by these criteria, the fine imposed on the Union in the present case cannot be said to have made the Union's contempt a serious offense, for which the Constitution would require a jury trial. Although $10,000 might represent a serious penalty to an individual with limited resources, it is bound to have a significantly weaker impact on a large organization with substantial financial resources, such as Local 70[51]—and its impact on the individual members of Local 70 (and other persons who pay fees to it), who are the only natural persons affected, is hardly substantial. Indeed, in 1969 approximately 13,000 persons were either dues-paying members of, or non-members required to pay certain fees to, Local 70[52]; thus the $10–

[51] See Statement, *supra*, pp. 9–10, regarding the Union's annual income from dues and its financial assets as of December 31, 1969. The Union was, of course, free to call to the district court's attention any significant changes in those figures, but, aside from vague references to a deterioration in the financial condition of Local 70 owing to unemployment (A. 66–67), it did not do so.

[52] This figure is derived as follows: Local 70's Form LM–2 shows that, in 1969, it paid a per capita tax of $233,331 to the International (A. 49, Item 52). Under the 1966 Constitution of the International Brotherhood of Teamsters (Art. X, Sec. 3(b)), in effect in 1969, each local union was required to pay the International a tax of $1.50 per month ($18 per year) for dues-paying members and "all persons paying agency shop fees, periodic service fees, and hiring hall fees to the Local Union." $233,331 divided by $18 yields a figure of just under 13,000 persons.

000 fine imposed in this case amounted to less than 80 cents per affected individual. Moreover, the fine was clearly in reasonable proportion to the amount of loss suffered by the firms which were victims of the repeated boycott activity in violation of the injunctions.[53]

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

ALLAN ABBOT TUTTLE,
Assistant to the Solicitor General.

PETER G. NASH,
General Counsel,

JOHN S. IRVING,
Deputy General Counsel,

PATRICK HARDIN,
Associate General Counsel,

NORTON J. COME,
Deputy Associate General Counsel,

ELINOR HADLEY STILLMAN,
Attorney,
National Labor Relations Board.

FEBRUARY 1975.

[53] The Pre-sentence Report filed with the district court was accompanied by affidavits showing a total of $27,201.06 in damage claims by such firms, and it was noted that additional claims for damages were anticipated (A. 46).

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (49 Stat. 449, 61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), are as follows:

> SEC. 8. (b) It shall be an unfair labor practice for a labor organization or its agents—
>
> * * * * *
>
> (4) (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike, or refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—
>
> * * * * *
>
> (B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person * * *. *Provided,* That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;
>
> * * * * *
>
> *Provided further,* That for the purposes of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit

publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution;

* * * * *

SEC. 10. (h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (U.S.C., Supp. VII, title 29, secs. 101–115).

* * * * *

(*l*) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 8(b), or section 8(e) or section 8(b)(7), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a

complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: *Provided further,* That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period: * * * Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: *Provided further,* That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. * * *

Relevant provisions of the Norris-LaGuardia Act, 47 Stat. 70, are as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That no court of the United States, as herein defined, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this Act; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this Act.
>
> * * * * *
>
> SEC. 4. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:
>
> (a) Ceasing or refusing to perform any work or to remain in any relation of employment;
>
> (b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 3 of this Act;
>
> (c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;
>
> (d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;
>
> (e) Giving publicity to the existence of, or the facts involved in, any labor dispute,

> whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;
>
> (f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;
>
> (g) Advising or notifying any person of an intention to do any of the acts heretofore specified;
>
> (h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and
>
> (i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 3 of this Act.
>
> * * * * *
>
> SEC. 11. In all cases arising under this Act in which a person shall be charged with contempt in a court of the United States (as herein defined), the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed: *Provided,* That this right shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to apply to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders, or process of the court.

18 U.S.C. 3692, 62 Stat. 844, provides as follows:

> In all cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed.

> This section shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice nor to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders or process of the court.

18 U.S.C. 1(3), 62 Stat. 684, provides as follows:

> Notwithstanding any Act of Congress to the contrary:
>
> * * * * *
>
> (3) Any misdemeanor, the penalty for which does not exceed imprisonment for a period of six months or a fine of not more than $500, or both, is a petty offense.

The relevant provisions of the United States Constitution are as follows:

> Article III, § 2: "The Trial of all Crimes, except in Cases of Impeachment shall be by Jury. * * *"
>
> * * * * *
>
> Amendment VI: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury. * * *"

U.S. GOVERNMENT PRINTING OFFICE: 1978

Supreme Court, U. S.
FILED
FEB 11 1975
MICHAEL RODAK, JR., CLERK

In the

Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1924

JAMES R. MUNIZ AND BROTHERHOOD OF TEAMSTERS AND AUTO TRUCK DRIVERS LOCAL NO. 70, IBTCHWA,

Petitioners,

VS.

ROY O. HOFFMAN, DIRECTOR, REGION 20, NATIONAL LABOR RELATIONS BOARD,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Brief of Respondent, California Newspapers, Inc., d/b/a San Rafael Independent Journal

NATHAN R. BERKE
One Embarcadero Center
San Francisco, California 94111
Counsel for Respondent California Newspapers, Inc.

SEVERSON, WERSON, BERKE & MELCHIOR
One Embarcadero Center
San Francisco, California 94111
Of Counsel

BORG PRINTING COMPANY OF CALIFORNIA, 346 FIRST STREET, SAN FRANCISCO 94105

SUBJECT INDEX

		Page
I.	Jurisdiction	1
II.	Questions Presented	1
III.	Statutes Involved	2
IV.	Statement of the Case	2
V.	Summary of the Argument	3
VI.	Argument	4
	1. A Fine in Excess of $500 Does Not Constitutionally Require a Jury Trial	4
	2. 18 U.S.C. 3692 Does Not Mandate a Jury Trial Since It Is Not Applicable to Injunctions Under the Labor-Management Relations Act	10
	3. It Is Doubtful That Petitioners Have Standing to Urge Their Contentions	14
VII.	Conclusion	15

TABLE OF AUTHORITIES CITED

Cases	Pages
Adickes v. S. H. Kress & Co., 398 U.S. 144, 90 S.Ct. 1598	15
Bloom v. Illinois, 391 U.S. 194, 88 S.Ct. 1477	6
Bloom v. State of Illinois, 391 U.S. 194, 88 S.Ct. 1477	11
Brotherhood of Loc. Fire & Eng. v. Bangor & Aroostook R. Co., 380 F.2d 570 (C.A. D.C., 1967)	12
Cheff v. Schnackenberg, 384 U.S. 373	3, 4, 5, 6, 7, 9
Codispoti v. Pennsylvania .... U.S. ...., 94 S.Ct. 2687	4, 5
District of Clumbia v. Clawans, 300 U.S. 617, 57 S.Ct. 660	7, 8
Duncan v. Louisiana, 391 U.S. 145, 88 S.Ct. 1444	6
Frank v. United States, 395 U.S. 147, 89 S.Ct. 1503	7, 8, 10
Green v. United States, 356 U.S. 183, 78 S.Ct. 632	5, 9, 10
Holland Furnace Co. v. Schnackenberg, 381 U.S. 924, 85 S.Ct. 1559.	5
In re Fair Lawn Education Ass'n., 63 N.J. 112, 305 A. 2d 72, cert. den. 414 U.S. 855, 94 S.Ct. 155, sub nom Fair Lawn Education Association v. New Jersey	6
In re Holland Furnace Company, 341 F.2d 548 (C.A. 7, 1965), cert. den. (Holland Furnace Company v. Elmer J. Schnackenberg) 381 U.S. 924, 85 S.Ct. 1559	6
In re Jersey City Education Ass'n., 115 N.J. Super. 42, 287 A. 2d 206, cert. den., 404 U.S. 948, 92 S.Ct. 268, sub nom Jersey City Education Association Et. al. v. New Jersey	6
In re Local 825, Operating Engineers, 57 LRRM 2143 (C.A. 3, 1964), cert. den. 379 U.S. 934, 85 S.Ct. 326	6
In re Puerto Rico Newspapers Guild Local 225, 476 F.2d 856	13
In re Union Nacional de Trabajadores, 502 F.2d 113 (C.A. 1, 1974)	12, 13

	Pages
Madden v. Grain Elevator, Flour and Feed Mill Wkrs., Etc., 334 F.2d 1014 (C.A. 7, 1964)	11, 12, 13
Rankin v. Shanker, 23 N.Y. 2d 211, 242 N.E. 2d 802, stay denied, 393 U.S. 930, 89 S.Ct. 289 sub nom Shanker v. Rankin	6
State v. Taylor, 353 U.S. 553, 77 S.Ct. 1037	15
Taylor v. Hayes .... U.S. ...., 94 S.Ct. 2697	5
United States v. Barnett, 376 U.S. 681	3, 4, 6
United States v. R.L. Polk & Company, 438 F.2d 377 (C.A. 6, 1971)	8, 9
United States v. Robinson, 449 F.2d 925 (C.A. 9, 1971)	12

Statutes

18 U.S.C.:		
	§ 3691	10
	§ 3692	3, 10, 11, 12, 13
	§ 1(3)	6, 8
	§ 1	8
47 Stat. 72, § 11		3
29 U.S.C.:		
	§ 160(h)	11, 12, 14
	§ 111	11, 14
	§ 101-115	12

CONSTITUTION

United States Constitution:
Article III, § 2 10
Sixth Amendment 10

MISCELLANEOUS

H.R. Rep. No. 304, 80th Congress, 1st Session 9, A176 (1974) 11
H.R. Rep. No. 152, 79th Congress, 1st Session, A164 (1945) 11

In the

Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1924

JAMES R. MUNIZ AND BROTHERHOOD OF TEAMSTERS AND AUTO TRUCK DRIVERS LOCAL NO. 70, IBTCHWA,
Petitioners,

VS.

ROY O. HOFFMAN, DIRECTOR, REGION 20, NATIONAL LABOR RELATIONS BOARD,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Brief of Respondent, California Newspapers, Inc., d/b/a San Rafael Independent Journal

I
JURISDICTION

The petition for writ of certiorari was granted on November 11, 1974, limited to two questions, namely, questions 3 and 4 in the petition.

II
QUESTIONS PRESENTED

The questions are as stated in petitioners' brief, however, they appear in reverse order from their appearance in the petition.

III
STATUTES INVOLVED

Part of the relevant statutory provisions are set forth in petitioners' brief, p. 3. In addition, there is involved Section 11 of the Norris-LaGuardia Act, 47 Stat. 72, which was repealed by 62 Stat. 862. 47 Stat. 72, provided:

> In all cases arising under this Act in which a person shall be charged with contempt in a court of the United States (as herein defined), the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed: *Provided,* That this right shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to apply to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders, or process of the court.

IV
STATEMENT OF THE CASE

Contrary to the statement by petitioners, the Board's Regional Director in his petition, accompanied by affidavits, for adjudication of civil and criminal contempt, included petitioners.

Also contrary to the impression which petitioners seek to leave and the statements that "Local 70's involvement . . . was, according to the National Labor Relations Board, reflected by the presence of petitioner James Muniz, the President of Local 70, and business agents of the Local in Marin County", the evidence is overwhelming as to the active participation by Muniz and Local 70 in the efforts to shut down the County (Tr. 2728).[1]

1. In their petition for the writ, both Local 70 and Muniz admitted engaging in violations of the Labor-Management Relations Act, but urged that what they did was not prohibited by the injunctions. Since the issue is confined solely to two legal points respecting whether petitioners were entitled to a jury trial, it does not seem necessary to detail the facts of the various violations by petitioners for the purpose of consideration of the issue.

Contrary to petitioners' statement that the District Court refused to bifurcate the civil and criminal contempt proceedings, the Court did sever them by proceeding to try the criminal contempt first. The Court stated that such evidence would be heard under the rules pertaining to criminal contempt and would at the conclusion thereof be considered as evidence in the civil matter with the right of the parties to produce such additional evidence as they may desire in the civil matter (Tr. 106, 107, 115).[2]

V
SUMMARY OF THE ARGUMENT

There is no constitutional right to a jury trial in every criminal proceeding. Criminal contempt proceedings are not criminal actions, but an offense *sui generis. Cheff v. Schnackenberg,* 384 U.S. 373, 380; *United States v. Barnett,* 376 U.S. 681.

The amount of a fine in a contempt proceeding does not *ipso facto* make the offense a "serious" one requiring a jury trial.

18 U.S.C. § 3692 does not mandate a jury trial in contempt proceedings resulting from violations of injunctions issued under the Labor-Management Relations Act, 1947, as amended. Section 3692 was formerly 47 Stat. 72, § 11 and was part of the Norris-La Guardia Act, which does not apply to injunctions under the Labor-Management Relations Act.

2. However, in their petition, these petitioners stated the Court bifurcated the proceedings and tried the criminal contempt first (p. 10, note 5).

Petitioners are not in a position to raise either the constitutional or statutory issues with respect to a jury trial since they did not raise them in the Court below.

VI

ARGUMENT

1. A Fine in Excess of $500 Does Not Constitutionally Require a Jury Trial

Local 70 argues that a fine of more than $500 makes the offense a "serious' rather than a petty one, and therefore, under Article III, Section 2 and the Sixth Amendment to the Constitution, a jury trial is a matter of right. Local 70 was fined $25,000 of which $15,000 was suspended for one year subject to being remitted if there were no subsequent violations of the injunctions (G.A. 43a-44a). Muniz was placed on probation for one year, subject to the Court's right to shorten or extend that period (G.A. 45a-46a).

This Court in *Cheff v. Schnackenberg,* 384 U.S. 373, 86 S.Ct. 1523, where Article III and the Sixth Amendment were also urged, reiterated that the decisions of this Court settled the rule that the right to a trial by jury "does not extend to every criminal proceeding." It was held that since *Cheff* received a sentence of six months imprisonment, and since the nature of criminal contempt, an offense *sui generis,* does not, of itself warrant treatment otherwise, that Cheff's offense can be treated only as "petty" in the eyes of the statute and this Court's prior decisions.[3] In an

3. This Court stated that in *United States v. Barnett* [376 U.S. 681] it held that criminal contempt proceedings were not criminal actions falling within the requirements of Article III and the Sixth Amendment. It was pointed out that some members of the Court in that case were of the view that without regard to the seriousness of the offense, punishment by summary trial without a jury would be constitutionally limited to that penalty provided for petty offenses. 384 U.S. 378-379.

Again in *Codispoti v. Pennsylvania* ..... U.S. ....., 94 S.Ct. 2687, at 2688, this Court stated that "an alleged contemnor is not entitled to a jury trial whenever a strong possibility exists that upon conviction he will face a substantial term of imprisonment regardless of the punishment actually imposed." In a case decided the same day as *Codispoti*, this Court in *Taylor v. Hayes* ..... U.S. ....., 94 S.Ct. 2697, at 2701, stated "Petitioner contends that any charge of contempt of court, without exception, must be tried to a jury. Quite to the contrary, however, our cases hold that petty contempt like other petty criminal offenses may be tried without a jury and that contempt of court is a petty offense when the penalty actually imposed does not exceed six months or a longer penalty has not been expressly authorized by statute." (Citing among others *Cheff v. Schnackenberg, supra*)

earlier opinion, not since overruled, this Court held that criminal contempts are not subject to jury trial as a matter of constitutional right. *Green v. United States,* 356 U.S. 183, 78 S.Ct. 632, 643. As a further recognition that criminal contempt proceedings are not crimes, this Court said in *Green* that while criminal contempt proceedings have traditionally been surrounded with many of the protections available in a criminal trial, it has never suggested that such protections included the right to grand jury indictments, 356 U.S. 183-184.

It was also pointed out in *Cheff* that the corporation of which *Cheff* was an officer was fined $100,000 in the same contempt proceeding and that the corporation's petition for a writ of certiorari was denied, 384 U.S. 375. *Holland Furnace Co. v. Schnackenberg,* 381 U.S. 924, 85 S.Ct. 1559.

In *Cheff,* recognizing that by limiting its decision to cases where a six months sentence was imposed may leave the lower courts "at sea" in instances involving greater sentences, this Court in the exercise of its supervisory power over the federal courts and under the peculiar power of the federal courts to revise sentences in contempt cases, ruled further that sentences exceeding six months for criminal contempt may not be imposed by federal courts

absent a jury trial or waiver thereof.[4] Neither in *Cheff* nor in subsequent decisions dealing with penalties imposed without a jury trial has this Court indicated that a jury trial is required where a fine in excess of $500 was imposed. This Court has consistently declined to review criminal contempt proceedings in which fines exceeding $500 were imposed without a jury trial or waiver thereof. *Bloom v. Illinois,* 391 U.S. 194, 88 S.Ct. 1477 (state court criminal contempt); *Duncan v. Louisiana,* 391 U.S. 145, 88 S.Ct. 1444 (state court conviction for misdemeanor).

In *Duncan,* this Court said it need not settle "the exact location of the line between petty offenses and serious crimes", but that "a crime punishable by two years in prison is . . . a serious crime and not a petty offense." 391 U.S. at 161, 162, 88 S.Ct. at 1454. In *Bloom,* this Court said that its "analysis of *Barnett*[5] . . . and *Cheff v. Schnackenberg* . . . makes it clear that criminal contempt is not a crime of the sort that requires the right to jury trial regardless of the penalty involved." 391 U.S. at 211, 88 S.Ct. at 1487.[6]

---

4. This Court indicated that it was guided in part by 18 U.S.C. 1(3), which provides that "[a]ny misdemeanor, the penalty for which does not exceed imprisonment for a period of six months or a fine of not more than $500, or both, is a petty offense."

5. *United States v. Barnett,* 376 U.S. 681, 84 S.Ct. 984.

6. *In re Local 825, Operating Engineers,* 57 LRRM 2143 (C.A. 3, 1964), cert. den. 379 U.S. 934, 85 S.Ct. 326 (union fined $15,000 and its business manager fined $5000); *In re Holland Furnace Company,* 341 F.2d 548 (C.A. 7, 1965), cert. den. (*Holland Furnace Company v. Elmer J. Schnackenberg*) 381 U.S. 924, 85 S.Ct. 1559 (Company was fined $100,000); *In re Jersey City Education Ass'n.,* 115 N.J. Super. 42, 287 A. 2d 206, 213-215, cert. den., 404 U.S. 948, 92 S.Ct. 268, *sub nom Jersey City Education Association Et. al. v. New Jersey* (union fined $10,000); *In re Fair Lawn Education Ass'n.,* 63 N.J. 112, 305 A. 2d 72, cert. den. 414 U.S. 855, 94 S.Ct. 155, *sub nom Fair Lawn Education Association v. New Jersey* (union with only 347 members fined $17,350); *Rankin v. Shanker,* 23 N.Y. 2d 211, 242 N.E. 2d 802, 807-808, stay denied, 393 U.S. 930, 89 S.Ct. 289, *sub nom Shanker v. Rankin.*

It seems obvious from *Cheff* and the subsequent decisions that the amount of the fine is not the determinative factor as to whether a jury trial shall or shall not be granted. It would also appear obvious that this Court's concern was with the deprivation of liberty and not the monetary penalty.

This Court has said that in determining whether a particular offense can be classified as "petty", it "has sought objective indications of the seriousness with which society regards the offense" and that "the most relevant indication of the seriousness of an offense is the severity of the penalty authorized for its commission." *Frank v. United States,* 395 U.S. 147, 148, 89 S.Ct. 1503, 1505; *District of Columbia v. Clawans,* 300 U.S. 617, 57 S.Ct. 660. However, as this Court pointed out, while in the ordinary criminal prosecution, the penalty authorized and not the penalty actually imposed is the relevant criterion, because the legislature in such cases has included within the definition of the crime itself, a judgment about the seriousness of the offense, that in criminal contempt cases the situation is different. A person may be found in contempt of court for a great many different types of offenses, ranging from disrespect for the court to acts otherwise criminal. This Court then went on to state and hold, *Frank v. United States,* 395 U.S. 147 at 149-150:

> "Congress, perhaps in recognition of the scope of criminal contempt, has authorized courts to impose penalties but has not placed any specific limits on their discretion; it has not categorized contempts as 'serious' or 'petty.' 18 U.S.C. §§ 401, 402. Accordingly, this Court has held that in prosecutions for criminal contempt where no maximum penalty is authorized, the severity of the penalty actually imposed is the best indication of the seriousness of the particular offense. See, e.g., Cheff v. Schnackenberg, *supra.* Thus, this Court has held that sentences for criminal contempt of up to six

months may constitutionally be imposed without a jury trial."

Thus, contrary to the contention of Local 70 that the objective indication as to whether a contemptuous offense is a "serious" or a "petty" one is determined by 18 U.S.C. § 1, this Court in *Frank v. United States, supra,* after pointing out that no specific limits have been placed upon the courts in imposing penalties in criminal contempt cases, held that "the maximum penalty authorized in petty offense cases is not simply six months' imprisonment and a $500 fine." 395 U.S. at 150-151, 89 S.Ct. at 1506.

In the instant case the Court of Appeals was not persuaded by *United States v. R. L. Polk & Company,* 438 F.2d 377 (C.A. 6, 1971) which resorted to 18 U.S.C. § 1(3) for a determination of what constitutes a petty offense in a criminal contempt proceeding. The Court below was correct not only in the light of this Court's decision in *Frank v. United States,* 395 U.S. at 150-151, but the Court in *Polk* misread this Court's holding in *District of Columbia v. Clawans* in applying what it regarded as the objective indication to which it was required to resort in determining whether the offense was a "serious" or a "petty one." In *Clawans,* this Court said, 300 U.S. 617, at 628, 57 S.Ct. at 663:

> "Doubts must be resolved, not subjectively by recourse of the judge to his own sympathy and emotions, but by objective standards such as may be observed in the laws and practices of the community taken as a guage of its social and ethical judgments."

In *Polk,* the Court engaged in a mechanistic application of 18 U.S.C. § 1(3) and overlooked this Court's reference to taking into account as well the practices of the community as a guage of its social and ethical judgments. In fact, that

Court regarded as its role, for the purpose of finding objective criteria, to look only to "the existing laws of the nation" 438 F.2d at 380. In the instant case, the Court of Appeals properly following this Court's decisions, recognized a distinction where the penalty imposed deprives a person of his liberty as against a monetary penalty which under the laws and practices of the community taken as a guage of its social and ethical judgments, may or may not constitute a serious penalty so as to raise the offense to a "serious" level or lower it to a "petty" one. As the Court of Appeals put it, 492 F.2d at 936:

> "A deprivation of his liberty for a period of more than six months could certainly be serious to any individual, whereas a fine of $500 to a large corporation or to a large union might have no deterrent or punitive effect at all."

Here Local 70 had at the time gross receipts in excess of $700,000 (Pet. Exh. 121, Presentence Report and Recommendations; Tr. 2676-2677). In addition Local 70 had assets of $510,000 (J.A. 46, 67). A net fine of only $10,000, under the circumstances, can hardly be said to be such a penalty as to raise the offense to the status of a "serious" offense and, therefore, require a jury trial.

Where there is no deprivation of liberty at stake, we submit that in the light of *Green, Cheff,* both *supra,* and the other cases referred to herein where fines exceeding $500 were imposed and this Court denied review, the Court below should be affirmed. Also in the light of the historical background discussed in *Green* which supports this Court's holding that criminal contempts are not subject to trial by jury as a matter of constitutional right, this Court must confine the issue of "serious" and "petty" offenses as respects the right to a jury trial to those situations involving

the imposition of imprisonment. We submit that this is required, unless this Court is prepared to upset "a long unbroken line of decisions involving contempts ranging from misbehavior in court to disobedience of court orders", which "establish beyond peradventure that criminal contempts are not subject to a jury trial as a matter of constitutional right." *Green v. United States,* 356 U.S. 165, 183, 78 S.Ct. 632, 643.[7]

2. 18 U.S.C. 3692 Does Not Mandate a Jury Trial Since It Is Not Applicable to Injunctions Under the Labor-Management Relations Act

Local 70 and Muniz urge that under 18 U.S.C. 3692 they were entitled to a jury trial, citing *Frank v. United States,* 395 U.S. 147, 89 S.Ct. 1503. We have discussed that case under the constitutional issue. Suffice it to say that *Frank* did not involve 3692 and that the issue dealt with involved a suspended sentence and probation for three years. This Court held Frank was not entitled to a jury trial. In a footnote, this Court comments that "Congress has provided for a jury trial in certain cases of criminal contempt" and cites, "e.g., 18 U.S.C. §§ 402, 3691, 3692." (395 U.S. 149). This Court then alludes to 18 U.S.C. 3691 and says that it provides for a jury trial in contempts involving willful disobedience of court orders where the "act or thing done or omitted also constitutes a criminal offense under any Act of Congress, or under the laws of any state." It holds that the "present case falls within an exception to that rule for cases involving disobedience of any court order 'entered in any suit or action brought or prosecuted in the name of,

7. N. 14 of *Green* lists the major decisions of this Court discussing the relationship between criminal contempts and jury trial, in which it was concluded or assumed that such proceedings are not subject to trial by jury under either Article III, § 2, or the Sixth Amendment.

or on behalf of, the United States.' " Here, then, we have a congressional act which clearly exempts from a jury trial "contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name of, or on behalf of, the United States." Thus, not only are such contempts removed from any "constitutional right" to a jury trial, but 18 U.S.C. 3692 must be read in light of Section 10(h) of the Labor-Management Relations Act [29 U.S.C. 160(h)].

As Respondent Regional Director of the Board notes in his brief, Section 3692 was merely a recodification of Section 11 of the Norris-La Guardia Act [29 U.S.C. § 111] and did not expand or alter the scope of Section 11, which limited its application to labor disputes under the Norris-La Guardia Act. When it was part of the Norris-La Guardia Act it was meant to apply solely to injunctions or restraining orders obtained by private parties under the limited provisions of that Act. In the "Historical and Revision Notes" to Section 3692, it is stated that "former section 111 of Title 29, Labor, upon which this section is based, as [sic] inapplicable to injunctions under the Taft-Hartley Act, see section 178 of Title 29."[8]

This Court has heretofore stated that 18 U.S.C. § 3692 was previously section 11 of the Norris-La Guardia Act. *Bloom v. State of Illinois,* 391 U.S. 194, 204, 88 S.Ct. 1477, 1483, n. 6.

For cases holding Section 3692 is not applicable to contempt proceedings under the Labor-Management Relations Act, see, *Madden v. Grain Elevator, Flour and Feed Mill*

8. Section 11 of Norris-LaGuardia was § 111 in 29 U.S.C. See historical note, 29 U.S.C. § 111, 112, p. 494, wherein it is stated that Section 111, Act Mar. 23, 1932, c. 90 § 11, 47 Stat. 72, related to contempts, speedy and public trial, and jury is now covered by section 3692 of Title 18, Crimes and Criminal Procedure. See, also H.R.Rep. No. 304, 80th Congress, 1st Session 9, A 176 (1947); H.R. Rep. No. 152, 79th Congress, 1st Session, A 164 (1945).

Wkrs., Etc., 334 F.2d 1014 (C.A. 7, 1964) where fines of $3000 a day were imposed and this Court denied review, 379 U.S. 967, 85 S.Ct. 661; *Brotherhood of Loc. Fire & Eng. v. Bangor & Aroostook R. Co.,* 380 F.2d 570, 579-580 (C.A. D.C., 1967). See also, *United States v. Robinson,* 449 F.2d 925 (C.A. 9, 1971) where the contemnors contended they were entitled to a jury trial because rule 42(b) states that a "defendant is entitled to a trial by jury in any case in which an act of Congress so provides", and it was further contended that Section 3692 provides a jury trial shall be accorded "In all cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute."

Accordingly, Section 3692 has no more applicability to contempt proceedings under the Labor-Management Relations Act than did Section 11 of the Norris-La Guardia Act. It is expressly provided in Section 10(h) of the Labor-Management Relations Act [29 U.S.C. 160(h)] that when "granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by sections 101 to 115 of this title."[9]

As for the recent divided decision *In Re Union Nacional de Trabajadores,* 502 F.2d 113 (C.A. 1, 1974), with all due respect to the First Circuit Court of Appeals, the majority opinion is not a well reasoned one. Indeed, the Court in that case, contrary to the holdings of this Court, states "This court has adopted the maximum penalty rule in the context of contempt for disobeying a labor injunction." (502 F.2d

9. Reference to Sections 101 to 115, is to the Norris-La Guardia Act [29 U.S.C. §§ 101-115].

116) It cites its opinion in *In re Puerto Rico Newspaper Guild Local 225,* 476 F.2d 856, where it said it starts "from the common ground that there is a constitutional right to a jury trial in cases of serious criminal contempts . . . and that the seriousness of the offense is to be determined by reference to the penalty imposed." In a footnote it states that "In most situations, the seriousness of an offense will be determined by looking to the maximum penalty authorized by statute for its commission." 476 F.2d at 857-858. The First Circuit majority rejecting the reasoning in *Madden v. Grain Elevator, Flour and Feed Mill Wkrs.,* 334 F.2d 1014 (C.A. 7, 1964) says that Court in considering Section 3692 did not give "extensive consideration of alternatives", and reached a conclusion "summarily" that Section 3692 covers matters formerly found in § 11 of the Norris-La Guardia Act. 502 F.2d at 117. Referring to *Madden* and the Court of Appeals opinion in the instant case, the First Circuit majority says (at 117):

> "Neither case, in our opinion, revealed sufficient analysis underlying the conclusion to be preclusive or persuasive. *Madden* simply states a conclusion, while, as we note below, *Hoffman's* fear of any limitation on the Board's equitable powers is misplaced."

The First Circuit majority also says *Madden* and *Hoffman* did not deal with "the scope and applicability of § 3692." A reading of those two cases reveals the error of the First Circuit majority. A better reasoned opinion in *Union Nacional de Trabajadores* is the dissent. 502 F.2d 121.

In sum, Section 3692 is not to be read as broadly as in the majority opinion in *In Re Union Nacional de Trabajadores, supra,* but as continuing the exception with respect to injunctions under the Labor-Management Relations Act.

When Congress placed former Section 11 of the Norris-La Guardia Act [29 U.S.C. § 111] in the recodification as Section 3692, it was aware of Section 10(h) [29 U.S.C. § 160 (h)] in the Labor-Management Relations Act and did not repeal or modify that section.

Congress not having repealed or modified section 10(h), then it follows that section 3692 must be construed in the light of the exemption which Congress made by enacting 10(h) expressly for cases involving injunctions under the Labor-Management Relations Act.

3. It Is Doubtful That Petitioners Have Standing to Urge Their Contentions

While we would like to have this Court resolve the issues raised, we feel an obligation to bring to the Court's attention the posture of the petitioners which raises a question as to their standing before this Court.[10]

Local 70 and Muniz did not raise the jury issue in the Court of Appeals. In their brief below, although Local 70 and Muniz state they "join and adopt all of the argument made by counsel for each of the other Labor Organizations and individuals found to be in contempt with respect to procedural, substantive and given [sic] matters", they state their brief "will dwell only on matters that are of particular concern to Local 70 and James Muniz" (Muniz and Local 70 Br., p. 3). No where in that brief do they discuss the jury issue. In their petition for rehearing in the Court of Appeals, they only assert two grounds, (1) notice of the injunctions and (2) the quantum of proof. They apparently

10. We referred to this in a footnote in our brief in opposition to the petition for a writ of certiorari, although we subsequently joined with the Solicitor General and Counsel for the Board in urging granting review limited to the questions now involved.

did not regard the jury issue of "particular concern" to them (Muniz and Local 70 Pet. for Rehearing, pp. 1-2).

Therefore, petitioners are in no position to advance such issue now. *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 90 S.Ct. 1598; *State v. Taylor*, 353 U.S. 553, 77 S.Ct. 1037, 1039, n. 2.

VII
CONCLUSION

It is submitted that the decision below should be affirmed.

Respectfully submitted,

NATHAN R. BERKE
Counsel for Respondent
California Newspapers,
Inc. d/b/a San Rafael
Independent Journal

SEVERSON, WERSON, BERKE & MELCHIOR
Of Counsel

February 10, 1975.

Supreme Court, U. S.
FILED
MAR 19 1975
MICHAEL RODAK, JR., CLERK

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1974

No. 73-1924

JAMES R. MUNIZ and BROTHERHOOD OF TEAMSTERS AND AUTO TRUCK DRIVERS LOCAL NO. 70, IBTCHWA,
Petitioners,

VS.

ROY O. HOFFMAN, DIRECTOR, REGION 20, NATIONAL LABOR RELATIONS BOARD,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

REPLY BRIEF FOR PETITIONERS

VAN BOURG, ALLEN, WEINBERG, WILLIAMS AND ROGER,
VICTOR J. VAN BOURG,
DAVID A. ROSENFELD,
45 Polk Street,
San Francisco, California 94102
Attorneys for Petitioners.

SHELDON OTIS,
506 Monroe Street,
Detroit, Michigan 48226.
Of Counsel.

PERNAU-WALSH PRINTING CO. - 562 MISSION STREET - SAN FRANCISCO, CA 94105

Subject Index

I

Page

The respondent has not established either statutory or legislative history which overcomes the clear language of § 3692 1

A. A preliminary analysis of the respondent's position .. 1

B. The assertion that § 3692 must be restricted to contempts of injunctions issued pursuant to Norris-LaGuardia "has been the consistent conclusion of the courts which have considered the question," Res. Brief, pp. 27-28, is erroneous 3

C. The jury trial of § 3692 serves an important purpose where criminal contempt is alleged 4

D. Respondent has retreated from reliance on statutory authority for its restrictive interpretation of § 3692 .. 5

E. Congressional debate surrounding the Civil Rights Act of 1957 is irrelevant and inconclusive 8

II

The respondent has misconceived the principles underlying the jury entitlement of Article III, § 2 and Amendment VI .. 9

A. The right to a jury trial is assured wherever the matter tried is criminal contempt 9

B. Respondent's suggestion that a flexible standard be adopted with respect to the seriousness of fines is unworkable 11

C. The penalties imposed upon Local 70 reflect a serious offense 14

Table of Authorities Cited

Cases

	Pages
Argersinger v. Hamlin, 407 U.S. 25 (1972)	12
Baldwin v. New York, 399 U.S. 66 (1970)	11, 13
Bloom v. Illinois, 391 U.S. 194 (1968)	4, 10, 11, 12, 13, 15
Brotherhood of Firemen v. United States, 411 F.2d 312 (5th Cir. 1969)	4
Brotherhood of Locomotive Firemen & Enginemen v. Bangor & Aroostook R.R. Co., 380 F.2d 570 (D.C. Cir. 1967), cert. denied, 389 U.S. 327 (1967)	3
Callan v. Wilson, 127 U.S. 540 (1888)	9
Cass v. United States, 417 U.S. 72 (1974)	2
Cheff v. Schnackenberg, 384 U.S. 373 (1966)	4, 13
Codispoti v. Pennsylvania, 418 U.S. 506 (1974)	9, 13
District of Columbia v. Clawans, 300 U.S. 617 (1937)	9
District of Columbia v. Colts, 282 U.S. 63 (1930)	9, 11
Duncan v. Louisiana, 391 U.S. 145 (1968)	11
Ex parte Collett, 337 U.S. 55 (1949)	2
Ex Parte Quirin, 317 U.S. 1 (1942)	9
Ex Parte Terry, 128 U.S. 289 (1888)	10, 11
In Re Piccinini, 35 F.R.D. 548 (W.D. Pa. 1964)	3
In Re Union Nacional de Trabajadores, 502 F.2d 117 (1st Cir. 1974)	4, 6, 8
In Re Winn-Dixie Stores, 386 F.2d 309 (5th Cir. 1967)	3, 4
Madden v. Grain Elevator, Flour and Feed Mill Workers, 334 F.2d 1014 (7th Cir. 1964), cert. denied, 379 U.S. 967 (1965)	3
McKeiver v. Pennsylvania, 403 U.S. 528 (1971)	9
Mitchell v. Barbee Lumber Co., 35 F.R.D. 544 (S.D. Miss. 1964)	3
National Labor Relations Board v. Red Arrow Freight Lines, 193 F.2d 979 (5th Cir. 1952)	3
Nat'l Woodwork Mfrs. Ass'n v. Nat'l Labor Relations Board, 386 U.S. 612 (1967)	8
Platt v. Minnesota Mining & Mfg. Co., 376 U.S. 240 (1964)	11

	Pages
Schauffler v. Local 1291, Internat'l Longshoremen's Ass'n, 189 F.Supp. 737 (E.D. Pa. 1960), rev'd on other grounds, 292 F.2d 182 (3rd Cir. 1961)	3
Securities Exchange Commission v. Capital Gains Research Bureau, 375 U.S. 180 (1963)	8
Shillitani v. United States, 384 U.S. 364 (1966)	5, 13
Toledo Newspaper Co. v. United States, 247 U.S. 402 (1918)	10
United States v. Oregon, 366 U.S. 643 (1961)	2
United States v. Regan, 232 U.S. 37 (1919)	9
United States v. Robinson, 449 F.2d 925 (9th Cir. 1971)	3
United States v. United Mine Workers, 330 U.S. 258 (1947)	10, 12
United States ex rel. Turner v. Williams, 194 U.S. 289 (1904)	9

Codes

Code of Civil Procedure:	
Section 1218	13
Penal Code:	
Sections 19 and 166	13

Constitutions

United States Constitution:	
Art. III, Sec. 2 or Amend. VI	9, 11, 12

Statutes

10 U.S.C.:	
Section 687(a)	2
18 U.S.C.:	
Section 1	12, 13
Section 3189	7
Section 3191	7
Section 3194	7
Section 3692	1, 2, 3, 4, 5, 7, 11

	Pages
Section 4162	7
Section 4243	7
29 U.S.C.:	
Section 101-115	7, 8
Section 160 10(h)	4, 5
Section 160 10(j)	5
Section 160 10(l)	3, 5, 6, 7
Sections 176-180	7
Section 178	6
Section 187	15
Sections 206-210	7
Section 208(b)	6
Section 528	8
42 U.S.C.:	
Section 2000e-5(h)	7

Texts

Bartosic & Lanoff, Escalating the Struggles Against Taft-Hartley Contemnors, 39 U. Chi. L. Rev. 255, 262 (1972)	5
103 Cong. Rec. 8536-8537, 8684 (Rep. Smith)	8
105 Cong. Rec. 6730 (Senator Ervin)	8
I & II, Legislative History of the Labor-Management Relations Act, 1947 (N.L.R.B. 1948), 291, 420, 568, 832, 868, and 1606	6

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1974

No. 73-1924

JAMES R. MUNIZ and BROTHERHOOD OF TEAMSTERS AND AUTO TRUCK DRIVERS LOCAL NO. 70, IBTCHWA,
Petitioners,

vs.

ROY O. HOFFMAN, DIRECTOR, REGION 20, NATIONAL LABOR RELATIONS BOARD,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

REPLY BRIEF FOR PETITIONERS

I

THE RESPONDENT HAS NOT ESTABLISHED EITHER STATUTORY OR LEGISLATIVE HISTORY WHICH OVERCOMES THE CLEAR LANGUAGE OF § 3692.

A. A Preliminary Analysis of the Respondent's Position.

The respondent's argument consists of a bootstrapping analysis with respect to the legislative and statutory history of statutes involved in this case. The clear and unambiguous language of the statute upon

which petitioners rely is not directly challenged by respondent. Res. Brief, p. 32. Nor is petitioners' assertion that settled rules of construction are applicable to this criminal statute, guaranteeing fundamental rights challenged. Rather, by focusing on exactly those statutory and legislative materials which are employed to construe an unclear or doubtful statute, respondent asserts that such material must necessarily be employed to discern the true intent of Congress with respect to the statute involved. Respondent attempts to create an ambiguity in § 3692 by referring to legislative materials, because the respondent is unable to assert any contradictory meaning in § 3692, any conflict with other statutes, or that the plain meaning would lead to a totally unintended result. By settled principles of statutory interpretation, those materials relied upon by respondent are not focused upon by the courts *until* some intrinsic aspect of the statute forces such resort to those extrinsic materials. Petitioners assert no such analysis is requisite.[1] *Ex parte Collett,* 337 U.S. 55, 61, n. 12 (1949).

---

[1]In *Cass v. United States,* 417 U.S. 72 (1974), Res. Brief, p. 32, this Court resorted to legislative material to resolve an internal inconsistency within the statutory provision. 10 U.S.C. § 687(a). *Cf. United States v. Oregon,* 366 U.S. 643, 648 (1961):

> "Having concluded that the provisions of § 1 are clear and unequivocal on their face, we find no need to resort to the legislative history of the Act. Since the State has placed such a reliance upon that history, however, we do deem it appropriate to point out that the history is at best inconclusive." (fn. omitted).

Petitioners assert that these cases govern: this Court need not consider any statutory or legislative history when faced with this unequivocal statute.

B. The Assertion That § 3692 Must Be Restricted to Contempts of Injunctions Issued Pursuant to Norris-LaGuardia "has been the consistent conclusion of the courts which have considered the question," Res. Brief, pp. 27-28, Is Erroneous.

A summary review of those cases relied upon by respondent reveals a superficial analysis.[2] *Madden v. Grain Elevator, Flour and Feed Mill Workers,* 334 F.2d 1014 (7th Cir. 1964), *cert. denied,* 379 U.S. 967 (1965); *Brotherhood of Locomotive Firemen & Enginemen v. Bangor & Aroostook R.R. Co.,* 380 F.2d 570 (D.C. Cir. 1967), *cert. denied,* 389 U.S. 327 (1967); *Schauffler v. Local 1291, Internat'l Longshoremen's Ass'n,* 189 F.Supp. 737 (E.D. Pa. 1960), *rev'd on other grounds,* 292 F.2d 182 (3rd Cir. 1961); and *National Labor Relations Board v. Red Arrow Freight Lines,* 193 F.2d 979 (5th Cir. 1952), are civil contempt cases, and absolutely irrelevant to a consideration of a statute governing criminal contempt. In *In Re Winn-Dixie Stores,* 386 F.2d 309 (5th Cir. 1967), there is no mention of § 3692. *Mitchell v. Barbee Lumber Co.,* 35 F.R.D. 544 (S.D. Miss. 1964); *In Re Piccinini,* 35 F.R.D. 548 (W.D. Pa. 1964); *United States v. Robinson,* 449 F.2d 925 (9th Cir. 1971); and *Internat'l Longshoremen's Ass'n, supra,*[3] concern contempts in matters not properly labelled "labor disputes." Moreover, the respondent inaccurately cites three cases as having arisen from 10(l) injunctive proceedings: *Madden, supra; N.L.R.B. v. Red Arrow, supra;* and *In Re Winn-Dixie,*

---

[2]See full discussion in brief of *Union Nacional de Trabajadores, amicus curiae,* pp. 29-36.

[3]See Pet. Brief, p. 28, n. 32.

supra. All those contempts arose during enforcement proceedings governed by § 10(h).

Respondent has also ignored the suggestion of the Fifth Circuit in 1969 that there was "much on the Brotherhood's side," *Brotherhood of Firemen v. United States,* 411 F.2d 312, 316-17 (5th Cir. 1969), with respect to the jury trial right in the criminal context.

This Court is urged to undertake the same fresh and persuasive analysis reflected in the First Circuit's thorough opinion in *In Re Union Nacional de Trabajadores,* 502 F.2d 117 (1st Cir. 1974).

C. The Jury Trial of § 3692 Serves An Important Purpose Where Criminal Contempt Is Alleged.

That a jury trial serves an important role in the criminal contempt process is settled law. *Bloom v. Illinois,* 391 U.S. 194 (1968), and *Cheff v. Schnackenberg,* 384 U.S. 373 (1966), Pet. Brief, p. 11-14. It is "infused with a national policy," *In Re Union Nacional de Trabajadores, supra,* 502 F.2d at 118, where a labor dispute is the source of the injunction.[4]

Contrary to the impression respondent seeks to create, Res. Brief, pp. 19-25, the jury trial right of § 3692 would not interfere with the effective administration of the National Labor Relations Act. Where an injunction is obtained, normal enforcement power

[4]See, also, Brief of the Labor Committee of the National Lawyers Guild, *amicus curiae,* p. 6-12, and Brief for the Unions, *amici curiae,* p. 3-9.

utilizes the civil contempt remedy.[5] The need for speedy enforcement is fully met by the civil contempt powers.

D. Respondent Has Retreated From Reliance On Statutory Authority for Its Restrictive Interpretation of § 3692.

Pet. Brief, pp. 29-38, extensively considered whether § 10(l) or § 10(h) expressly withdrew the jury trial provisions of § 3692 from contempts of injunctions issued pursuant to National Labor Relations Board proceedings. Respondent devotes seven lines to these issues, Res. Brief, p. 20-21, and two footnotes, n. 15 and n. 22.[6]

The respondent, in abandoning the statutory reliance, retreats to two related arguments: (1) the legislative history of the 1947 amendments creating § 10(l) indicates Congress intended to exempt all 10(l) proceedings from the provisions of Norris-LaGuardia, and (2) the statutory and legislative history of the enactment of § 3692 in 1948 supports the assertion that Congress meant to restrict its application to injunctions issued under the auspices of the Norris-LaGuardia Act.

1. There is no substantial legislative history that "Congress did indeed intend to free proceedings

[5]*Shillitani v. United States,* 384 U.S. 364, 371, n. 9 (1966); and Bartosic & Lanoff, *Escalating the Struggles Against Taft-Hartley Contemnors,* 39 U. Chi. L. Rev. 255, 262 (1972).

[6]N. 22 reflects a confused analysis. Respondent asserts that § 10(h) must be applicable to injunctions issued under § 10(l), because § 10(j) does not contain the language on exemption found in § 10(l), ("notwithstanding any other provision of law"). There is simply no authority for such a proposition. See Pet. Brief, n. 38.

under Section 10(l) from the requirements of the Norris-LaGuardia Act . . ." Res. Brief, p. 24. Respondent relies heavily upon an isolated comment by Senator Ball during Congressional debate in 1947. Res. Brief, p. 24-25. Petitioners have previously indicated the inconclusiveness of Senator Ball's statement to establish the proposition advanced by respondent. Pet. Brief, p. 38, n. 51. That Senator Ball's ironic statement is meaningless at best can be seen from a comparison of the concurrent debates surrounding § 208(b), 29 U.S.C. § 178, of the Labor-Management Relations Act, 1947, which provides:

> "In any case, provisions of sections 101-115 of this title shall not be applicable."

In that case, Congress unequivocally exempted all injunctions issued during national emergency disputes from all Norris-LaGuardia provisions. The First Circuit noted that if Congress knew how to completely remove Norris-LaGuardia restrictions in one section of the 1947 Act, it could easily have done so in any other section. *In Re Union Nacional de Trabajadores, supra,* 502 F.2d at 121. The debates themselves revealed that Congress specifically intended to exempt Norris-LaGuardia from injunctions issued in national emergency disputes. I & II, *Legislative History of the Labor-Management Relations Act, 1947* (N.L.R.B. 1948), 291, 420, 568, 832, 868, and 1606.[7] In 1947,

[7] *Cf.* proposed § 12(c) of H.R. 3020, I, *Legislative History of the Labor Management Relations Act, 1947, supra,* at 206, which would have exempted certain injunctions from all Norris-LaGuardia provisions. This proposal was rejected.

Congress knew which parts of the Labor-Management Relations Act it wished to exempt from all Norris-LaGuardia provisions: §§ 206-210, 29 U.S.C. §§ 176-180. There is no evidence that Congress intended to exempt § 10(l) from all Norris-LaGuardia provisions.[8]

2. The enactment of § 3692 in 1948 does not reveal that Congress intended to limit that section's applicability to Norris-LaGuardia contempts. Respondent asserts that § 3692 must be restricted to those contempts of injunctions subject to the limitations imposed by Norris-LaGuardia, because the reviser's notes did not positively assert that "significant change in coverage [had been intended]." Res. Brief, p. 26. This is tantamount to a suggestion that this Court should presume that a new statute is limited to the scope of its predecessor unless the revisers or Congress positively indicate to the contrary. Such a method of statutory construction is not permissible.[9] Moreover the revisers did specifically indicate that a change was made in the coverage of the section: "Reference to specific sections of the Norris-LaGuardia Act (sections 101-115 of title 29, U.S.C.

[8] *Cf.* an analogous Federal statute where Norris-LaGuardia provisions were also clearly made totally inapplicable: 42 U.S.C. § 2000e-5(h).

[9] Respondent claims that wherever "a repealed provision was expanded," the revisers took care to note this. Res. Brief, p. 26, citing 18 U.S.C. § 4162. The weakness of respondent's argument is demonstrated by noting that the revisers noted specifically where changes were meant to include only wording or similar technical drafting. See, *e.g.,* §§ 3189, 3191, 3194, and 4243. If the revisers had intended any changes in phraseology to have been limited to such, they would have explicitly stated this.

1940 ed.) were eliminated."[10] The revisers' notes indicate an attempt to broaden the scope of the old Norris-LaGuardia provisions, not, as respondent claims, an attempt to limit their scope.

E. Congressional Debate Surrounding the Civil Rights Act of 1957 Is Irrelevant and Inconclusive.

This Court has consistently refused to consider such legislative statements in determining the meaning of prior enactments. *Nat'l Woodwork Mfrs. Ass'n v. Nat'l Labor Relations Board,* 386 U.S. 612, 639, n. 34 (1967); and *Securities Exchange Commission v. Capital Gains Research Bureau,* 375 U.S. 180, 199-200 (1963). These statements inserted in the Congressional Record are unreliable in view of their self-serving origin[11] and contradicted by other Congressmen.[12]

Furthermore, debate surrounding the 1959 Labor-Management Reporting and Disclosure Act, and in particular, § 608, 29 U.S.C. § 528, indicates that as late as that date, Congressmen believed that the contempt provisions of Norris-LaGuardia still prevailed.[13]

---

[10]See, Pet. Brief, n. 61, which discusses another statutory change, indicating an intent by Congress to broaden the statutory scope.

[11]See brief of *Union Nacional de Trabajadores, amicus curiae,* fn. at p. 21-22.

[12]103 Cong. Rec. 8536-8537, 8684 (Rep. Smith).

[13]105 Cong. Rec. 6730 (Senator Ervin).

II

THE RESPONDENT HAS MISCONCEIVED THE PRINCIPLES UNDERLYING THE JURY ENTITLEMENT OF ARTICLE III, § 2 AND AMENDMENT VI.

A. The Right To A Jury Trial Is Assured Wherever The Matter Tried Is Criminal Contempt.

Respondent's argument relies upon the premise that it is imprisonment per se, rather than the criminal nature of the proceedings, which determines whether a jury trial is required under Art. III, § 2 or Amend. VI. Res. Brief, p. 35-42. This is erroneous, for it is the criminal nature of the proceedings which invokes the rights guaranteed by the Constitution.

This Court has consistently judged the applicability of Art. III, § 2 and Amend. VI on the basis of whether the proceeding is criminal or otherwise.[14] *Callan v. Wilson,* 127 U.S. 540, 549-50 (1888); *District of Columbia v. Colts,* 282 U.S. 63, 72-73 (1930); and *District of Columbia v. Clawans,* 300 U.S. 617, 624-25 (1937). In addition, these cases teach that certain offenses characterized as "petty" do not rise to the level of crimes within the constitutional sense. Wherever the proceeding is criminal and the offense is serious, a jury trial is guaranteed. See *Codispoti v. Pennsylvania,* 418 U.S. 506, 511-13, 516 (1974).

---

[14]No jury trial is granted in immigration proceedings, *United States ex rel. Turner v. Williams,* 194 U.S. 289, 290 (1904); in trials of alien spies, *Ex Parte Quirin,* 317 U.S. 1, 38-46 (1942); in recovery of civil penalties, *United States v. Regan,* 232 U.S. 37, 47-48 (1919); and in juvenile proceedings, *McKeiver v. Pennsylvania,* 403 U.S. 528 (1971).

For those reasons, alleged criminal contemnors are also entitled to a jury trial. When this Court held that a jury was constitutionally requisite in serious criminal contempts, it stated:

> "Criminal contempt is a crime in the ordinary sense; it is a violation of the law, a public wrong which is punishable by fine or imprisonment or both. * * *
>
> "Given that criminal contempt is a crime in every fundamental respect, the question is whether it is a crime to which the jury trial provisions of the Constitution apply. We hold that is, primarily because in terms of those considerations which make the right to a jury trial fundamental in criminal cases, there is no substantial difference between serious contempts and other serious crimes." *Bloom v. Illinois,* 391 U.S. 194 at 201-202 (1968).[15]

Respondents argues that "the risk of arbitrary deprivation of personl liberty" is the touchstone for the right of jury trial. Res. Brief, p. 36, 38. It is not surprising that this Court employed terms descriptive of the deprivation suffered by natural persons and the protection offered them by the jury trial right. No precedential case before this Court had a corporation as a party. The abuses to which this Court referred are, however, equally applicable to entities as they are to natural persons: "arbitrary in its nature and liable to abuse," *Ex parte Terry,* 128 U.S. 289, 313 (1888); and "arbitrary exercise of official power," *Bloom v. Illinois, supra,* 391 U.S. at 202. Moreover, as to a corporate entity a jury is "an inestimable safeguard against the corrupt or overzealous prosecutor, and against the complacent, biased, or eccentric judge," *Duncan v. Louisiana,* 391 U.S. 145, 156 (1968).

[15]Indeed, in that case, this Court cited cases where corporations, including unions, had been cited for contempt. *Toledo Newspaper Co. v. United States,* 247 U.S. 402 (1918); *United States v. United Mine Workers,* 330 U.S. 258 (1947); and cases cited at n. 3 of *Bloom.*

Contrary to respondent's position, neither Art. III, § 2 nor Amend. VI is limited in application to natural persons.[16] Corporations have asserted rights guaranteed by these constitutional provisions in this Court. *Platt v. Minnesota Mining & Mfg. Co.,* 376 U.S. 240, 245 (1964). Respondent's position is simply untenable.

B. Respondent's Suggestion That a Flexible Standard Be Adopted With Respect to the Seriousness of Fines Is Unworkable.

Respondent's position is that whether a contempt is serious or petty must depend on "such factors as the economic resources of the defendant and the amount of economic damage flowing from the offense." Res. Brief, pp. 15-16. This position is incorrect for several reasons.

First, this formula would impose the "nature of the offense" test, which this Court has eschewed since *District of Columbia v. Colts,* 282 U.S. 63 (1930). See *Baldwin v. New York,* 399 U.S. 66, 69, n. 6 (1970). Respondent would permit one test as to imprisonment (the penalty imposed), and another as to fines (the

[16]Art. III, § 2 speaks of "the trial of all crimes," while Amend. VI speaks of the "accused." *Cf.* 18 U.S.C. § 3692. ("accused").

nature of the offense) to determine the seriousness of the offense for jury trial entitlement.

The impracticality of such a scheme is reflected in this Court's discussion of the nature of fines in *United States v. United Mine Workers, supra,* 330 U.S. at 302-306. The multitude of factors in determining the appropriate fine in those circumstances suggests the enormous difficulty involved in deciding whether jury entitlement exists in a particular case. No trial court could adequately weigh such factors prior to a trial to determine whether a jury was requisite. *Cf. Argersinger v. Hamlin,* 407 U.S. 25, 40 (1972) (jury must be impanelled if judge contemplates incarceration). And no trial court would want to engage in the extensive fact-finding requisite to support its failure to grant a jury after imposing substantial fines.[17]

Finally, this proposal confuses the Eighth Amendment's protection against excessive fines with that of jury entitlement under Art. III, § 2 and Amend. VI.[18] The right to a jury trial arises, not from the excessive penalty, but rather, from the seriousness of the crime as measured by the penalty imposed.

For these reasons, this Court chose the Congressional standard of 18 U.S.C. § 1 as a dividing line

[17]In this case, the trial court asked for certain pre-sentence information, solely for the purposes of determining the amount of sentence, and summarily rejected the contention that the evidence was relevant for jury purposes. G.A. 46a-48a.

[18]The discussion in *United States v. United Mine Workers, supra,* concerned the excessiveness of the fine imposed. "Finally, over the years in the Federal system, there has been a recurring necessity to set aside punishments for criminal contempt as either unauthorized by statute or too harsh." *Bloom v. Illinois, supra,* 391 U.S. at 206.

between serious and petty crime.[19] This further reflects the need for "objective criteria reflecting the seriousness with which society regards the offense." *Baldwin v. New York,* 399 U.S. 66, 68 (1970).

Contrary to respondent's understanding, this line reflects the limits imposed by most states as to contempt penalties. See Pet. Brief, n. 19.[20] In California, where this action arose, contemnors may not be fined more than $500, whether the contempt is brought under the relevant civil or penal provisions.[21]

Only under the Federal system, where the penalty for criminal contempt has not been so limited, does the problem exist of developing an approximate dividing line with respect to either imprisonment or fine. Neither are the civil penalties emphasized by respondent relevant. Res. Brief, p. 46-49. The distinction between civil penalties and criminal punishment is plain. *Shillitani v. United States, supra.*

[19]The genealogy of this dividing line was noted in *Codispoti v. Pennsylvania, supra,* 418 U.S. at 512, n. 4. Suffice it to say that the case before the Court does not involve the more difficult issue of imposing such a line through the due process clause of the Fourteenth Amendment upon the states. Rather, this involves those factors which impelled this Court in *Cheff v. Schnackenberg, supra,* 384 U.S. at 379-380, to implement the 18 U.S.C. § 1 dividing line "in the exercise of the Court's supervisory power."

[20]Indeed, this Court has recognized that "[l]imitations of the maximum penalties for criminal contempt are common in the States." *Bloom v. Illinois, supra,* 391 U.S. at 206, n. 8.

[21]California Code of Civil Procedure § 1218 and California Penal Code §§ 166 and 19 impose this absolute limit.

C. The Penalties Imposed Upon Local 70 Reflect A Serious Offense.

Respondent now argues that in any case, the penalties imposed upon Local 70 were not serious enough to warrant the impanelling of a jury. This a complete reversal of position from that argued in the trial court. In the respondent's formal submission to the trial court prior to the imposition of fines, respondent asserted:

> "Although petitioner [Mr. Hoffman, respondent herein] considers the contumacious conduct of respondents as having been of extremely serious nature, and has given great consideration to recommending the imposition of both fines and imprisonment for the individual respondents, he is presently of the view that the authority and dignity of the court can as well be vindicated by the imposition of substantial fines only." J.A. 47.

In oral argument, attorney Milo Price stated respondent's position:

> "Your Honor, the petitioner considers the violation of the Act here, absent (sic) orders of this Court, as having been extremely serious in nature. This is not a minor frolic engaged by the unions. This was a deliberate course of conduct, well planned, well defined, and petitioner feels that the sanctions for it and for the transgressions encouraged should be substantial . . ." J.A. 76.

The trial court concluded that it wished to impose criminal penalties which would "be not too heavy nor too light." G.A. 45a. The court imposed the full

$25,000 fine requested by Respondent as to Local 70 although it suspended a portion.

The respondent's assertion to the contrary conflicts with the record that it established in the trial court below.[22]

In summary, the principles established from *Bloom v. Illinois, supra,* to *Codispoti v. Pennsylvania, supra,* are applicable both to unincorporated associations and to the imposition of fines. Neither logic nor practicality dictates an opposite result.

Dated, March 14, 1975.

Respectfully submitted,

VAN BOURG, ALLEN, WEINBERG,
WILLIAMS AND ROGER,
VICTOR J. VAN BOURG,
DAVID A. ROSENFELD,
Attorneys for Petitioners.

SHELDON OTIS,
Of Counsel.

---

[22]Respondent asserts that a trial court should consider "the amount of loss suffered by the firms which were victims of the repeated boycott activity . . ." Res. Brief, p. 54. Such alleged damage should be the subject of the statutory remedy provided, 29 U.S.C. § 187 (suit for violation of secondary boycott provisions), or for imposition of the relevant civil penalties. G.A. 52a and 53a.

In the Supreme Court
OF THE
United States

No. 73 - 1924

James R. Muniz and Brotherhood of Teamsters and Auto Truck Drivers Local No. 70, IBTCHWA,

Petitioners,

vs.

Roy O. Hoffman, Director, Region 20, National Labor Relations Board,

Respondent.

Brief of the Labor Committee of The National Lawyers Guild as *Amicus Curiae*

Jonathan Shapiro
for the
Labor Committee of the
National Lawyer Guild
595 Massachusetts Ave.
Cambridge, Massachusetts 02139

This Brief was Prepared by 17 Members of the Boston Chapter of the National Lawyers Guild Labor Committee

---

TABLE OF CONTENTS:

Summary 1

Introduction 4

I. Legislative History and the Statutory Language of 18 U.S.C. §3692 Grant the Right to a Jury Trial in Contempt Proceedings Arising out of Injunctions Issued Pursuant to the Taft-Hartley Act. 6

A. History and the Statutory Development of the Labor Law Demonstrate the Justification for Selection of the Jury as Fact-Finder in Labor Contempt Cases. 6

B. The Enactment of 18 U.S.C. §3692 Affirmed the Right to a Jury Trial in Labor Contempt Proceedings Involving Injunctions Arising Under the Taft-Hartley Act. 15

C. The Purposes Furthered by 18 U.S.C. §3692 Require That Persons Accused of Violating a Taft-Hartley Injunction in the Context of a Labor Dispute be Entitled to a Trial by a Jury of Their Peers. 19

II. Petitioner Union was Constitutionally Entitled to a Jury Trial Because of the Intrinsically Serious Nature of the Offensive as well as the Severe Nature of the Punishment Imposed. 27

A. Although All Criminal Contempts May Not Be Intrinsically Serious by Constitutional Standards, Particular Contempts May Be Deemed Serious on the Basis of Either the Nature of the Punishment or the Nature of the Offense. 27

B. The Instant Offense Consisting of a Combination of Workers, is of an Inherently Serious Nature, and Should Have Been Tried by Jury. 31

C. The $25,000 Fine Imposed on Petitioner Union Rendered the Offense Serious, and a Jury Trial Was Therefore Required. 38

Conclusion 40

TABLE OF CASES

American Steel Foundaries v. Tri-City Trades Council,
257 U.S. 184 (1921) 13, 37
Baldwin v. New York,
399 U.S. 66 (1908) 27, 29, 30, 32, 37
Bedford Cut Stone Co. v. Journeymen Stone Ass'n,
274 U.S. 37 (1927) 27, 30, 35, 36, 39
Bloom v. Illinois,
391 U.S. 194 (1968) 7, 23
Boys Market, Inc., v. Retail Clerks Local 770,
398 U.S. 235 (1970) 13
Burdett v. Commonwealth,
103 Va. 838, 48 S.E. 878 (1904) 9
Callan v. Wilson,
127 U.S. 540 (1888) 28, 31, 33, 36
Cheff v. Schnackenburg,
384 U.S. 373 (1966) 27, 30, 38
Codispoti v. Pennsylvania,
94 S.Ct. 2687 (1974) 27
District of Columbia v. Clawans,
300 U.S. 617 (1937) 29
District of Columbia v. Colts,
282 U.S. 63 (1930) 27, 29, 30, 31, 36
Duncan V. Louisiana,
391 U.S. 145 (1968) 27, 29, 31, 38, 39
Duplex Printing Press Co. v. Deering,
254 U.S. 443 (1921) 38
Dyke v. Taylor Implement Co.,
391 U.S. 216 (1968) 27
Frank v. United States,
356 U.S. 147 (1969) 27, 31, 37, 38, 39
Gompers v. Bucks Stove and Range Co.,
221 U.S. 418 (1911) 13, 25, 38
Hoffman v. I.L.W.U., Local 10,
492 F.2d 929, 934 (9th Cir. 1974) 20
In Re Atchinson,
284 F. 604 (S.D. Fla. 1922) 9
In Re Debs,
158 U.S. 564 (1895) 13, 34, 38

In Re Union Nacional de Trabajadores,
502 F.2d 113 (1st Cir. 1974) 14, 17, 18, 22, 25, 26, 38
Loewe v. Lawlor,
208 U.S. 274 (1908) 13
Mastro Plastics Corp. v. NLRB,
350 U.S. 270 (1956) 20, 23
Michaelson v. United States ex rel. Chicago, St. P. M&O Ry.,
266 U.S. 42 (1924) 9, 25
Nichols v. Judge of Superior Court,
130 Mich. 187, 89 N.W. 691 (1902) 9
Pernell v. Southall Realty,
94 S.Ct. 1723 (1974) 28
Schick v. United States,
195 U.S. 65 (1904) 29
Sinclair Refining Co. v. Atkinson,
370 U.S. 195 (1962) 23
State v. Dalton,
134 Mo. App. 517, 114 S.W. 1132 (1908) 33
State ex. inf. Crow, Atty. Gen. v. Shepherd,
177 Mo. 205, 76 S.W. 79 (1903) 9
Taylor v. Hayes,
94 S.Ct. 2697 (1974) 27
Tinder v. United States,
345 U.S. 565 (1953) 15, 19
United States v. Barnett,
376 U.S. 681 (1964) 35
United States v. R.L. Polk & Co.,
438 F. 2d 377 (6th Cir.,1971) 38
Walton Lunch Co. v. Kearney,
236 Mass. 310, 128 N.E. 429 (1920) 9

TABLE OF STATUTES

Title 18, United States Code (1970 ed), [Act of June 25, 1948, ch. 645, 62 Stat. 683] .....
Section 1 [62 Stat.] 2, 39
Section 402 [62 Stat. 701] .....
Section 3691 [62 stat. 844] .....
Section 3692 [62 Stat. 844] 2, 6, 17, 19, 20, 21

Clayton Anti-Trust Act [Act of October 15, 1914, ch. 323, 38 Stat. 730] .....
Section 22 [28 U.S.C. §389 (1946 ed); 38 Stat. 738; Repealed, Act of June 25, 1948, ch. 62 Stat.] 9

Norris-LaGuardia Act [29 U.S.C. §101 et seq.(1970 ed); Act of March 23, 1932, ch. 90, 47 Stat. 70] 1
Section 7 [29 U.S.C. §107 (1970), 47 Stat. 71 11
Section 11 [29 U.S.S. §111 (1946 ed), 47, Stat. 73; Repealed, Act of June 25, 1948, ch. 645, §21, 62 Stat. 862] 11, 12, 14
Section 13(c) [29 U.S.C. §113 (c) (1970 ed); 47 Stat. 73] .....

National Labor Relations Act (The Wagner Act) [29 U.S.C. §151 et seq. (1970 ed); Act of June 5, 1935, ch. 372, 49 Stat. 449] 16
Section 10 (h) [29 U.S.C. §160 (h); 49 U.S.C. 453] 12, 23, 26

Labor-Management Relations Act (The Taft-Hartley Act) [29 U.S.C. §141 et seq.(1970 ed); Act of June 23, 1947, ch. 120, 61 Stat. 136] .....
Sections [29 U.S.C. §§ 158 (b) (1), 158 (b) (4) (1970 ed); 61 Stat.] 13
Sections 10 (j), 10 (l) [29 U.S.C. §§ 160 (j), 160 (l) (1970 ed); 61 Stat.] 13, 24
Section 208 [29 U.S.C. §178 (1970 ed); 61 Stat.] 25
Section 301 [29 U.S.C. §185 (1970 ed); 61 Stat.] 25

Labor-Management Reporting and Disclosure Act (The Landrum-Griffin Act)] 29 U.S.C. §§401 et seq. (1970 ed); Public Law 86-257. 75 Stat. 519] 18
Section 608 [29 U.S.C. §528 (1970 ed) 73 Stat. 541] 18

LEGISLATIVE MATERIAL CITED:

51 CONG. REC. 14369 (1914) (Senate Debate on the Clayton Act) 9

75 CONG. REC. 4507 (1932) (Senate Debate on the Norris-LaGuardia Act) 11

75 CONG. REC. 5515 (1932) (House Debate on the Norris-LaGuardia Act) 10

93 CONG. REC. 4757, 5041, 6445-6446 (1947) (Senate Debate on the Taft-Hartley Act) 14

93 CONG. REC. 5048-5049 (1947) (House Debate on the Revision of the Criminal Code) 15

103 CONG. REC. 8536-8537, 8648 (1957) (House Debate on the 1957 Civil Rights Act) 18

105 CONG. REC. 6730 (1959) (Senate Debate on the Landrum-Griffin Act) 18

H.R. REP. No.304, 80th Cong., 1st Sess. (1947) 15, 16

H.R. REP. No. 245, 80th Cong., 1st Sess. (1947) 14

H.R. REP. No.510, 80th Cong., 1st Sess. (1947) 24

SECONDARY MATERIALS CITED;

BARTOSIC & LANOFF, Escalating the Struggle Against Taft-Hartley Contemnors, 39 U. CHI. L. REV. 255 (1972) 5

BONNET, The Origin of the Labor Injunction, 50 SO. CAL. L. Rev. 105 (1931) 32, 34

3 COMMONS & GILMORE, DOCUMENTARY HISTORY OF AMERICAN INDUSTRIAL SOCIETY (1910) 32

A. COX & D. BOK, LABOR LAW (7th ed. 1969) 32

F. FRANKFURTER & N. GREENE, THE LABOR INJUNCTION (1930) 6, 7, 8, 34, 40, 45

S. GOMPERS, 4 AMERICAN FEDERATIONIST (1897) 8

NELLES, The First American Labor Case, 41 YALE L.J. 165 (1931) 32

NELLES, A Strike and Its Legal Consequences, 40 YALE L.J. 165 (1931) 32, 34

SAYRE, Criminal Conspiracy, 35 HARV. L. REV. 393 (1922) 32

C. SWAYZEE, CONTEMPT OF COURT ON LABOR INJUNCTIONS CASES 100 (1935) 7

Trial by Judge and Jury, 33 AM. L. REV. 321 (1899) 8

SUMMARY

Amicus contends that contemnors who are tried pursuant to alleged violations of federal labor injunctions, including those arising out of the Labor-Management Relations Act (Taft-Hartley Act), 29 U.S.C. §141 et. seq., are entitled to jury trials. This right to fact-finding by a jury derives from historical lessons, from the clear statutory language of Section 3692 of Title 18 of the United States Code, and from basic constitutional protections.

During the nineteenth and early twentieth century, the federal courts had jurisdiction to issue injunctions against unions involved in labor disputes. The issuance of these injunctions, and their enforcement through judge-tried contempts, by-passed the common law right to a trial by jury in conspiracy cases. The judge made the law, evaluated the factual evidence, applied his law and sentenced the defendant. This combination of functions abrogated the accepted division of legal responsibilities and, by the end of the 19th century, provoked considerable criticism. Labor leaders, judges, lawyers, and finally legislators recognized the divisiveness engendered by these injunctions and their enforcement.

In 1932, Congress enacted the Norris-LaGuardia Act, 29 U.S.C. §101 et. seq., severely limiting the power of the federal courts to issue injunctions against workers in labor disputes, and guaranteeing in Section 11 of that statute the right to a jury in contempt trials arising out of these injunctions. The Labor-Management Relations Act, passed by the Eightieth Congress in 1947, authorized the federal courts to issue injunctions in order to enforce findings by the NLRB of probable unfair labor practices. Employers, rather than proceeding under the stringent requirements of the Norris-LaGuardia Act, could rely on the NLRB to seek injunctions under the laxer standards of the Taft-Hartley Act. Without any substantial debate, Congress inadvertently failed to extend the jury trial right to contempts arising out of these injunctions.

However, in 1948, the same Congress, in revising the federal criminal code, rectified this omission by its enactment of 18 U.S.C. §3692. This new statute, in providing for jury trials in all cases of contempt arising under the laws of the United States governing the issuance of injunctions in cases involving labor disputes, makes evident the intent of the legislators to extend the jury right beyond the cases arising under the Norris-LaGuardia Act. If interpreted as its plain words require, Section 3692 clearly extends the jury right to contempt cases arising under the Taft-Hartley Act, while not defeating the purposes of that Act. Nor does such an interpretation conflict with Section 10(h) of the National Labor Relations Act as incorporated into the Taft-Hartley Act. Extension of the right to jury trials to Taft-Hartley derived contempt cases does not limit the equitable jurisdiction of the federal courts. It merely places fact-finding responsibility in contempt cases upon jury rather than judge. Section 3692, therefore, must be interpreted to guarantee the right to jury trials in contempt cases arising under both the Norris-LaGuardia and the Taft-Hartley Acts.

In the event that this Court concludes that there is no statutory right to a jury trial, however, the constitutional issue must still be faced. Petitioners are constitutionally entitled to a jury trial for two reasons. First, the $25,000 fine imposed upon petitioner union renders the offense non-petty pursuant to 18 U.S.C. §1, in which Congress has explicitly drawn a line between petty and serious offenses. This statute contains no exception for fines imposed upon unions and should be strictly construed.

Second, although this Court has indicated that conduct constituting criminal contempt is not inherently serious, the possibility remains that particular contemptuous conduct might be so serious as to require a jury trial. In the instant case, petitioner's conduct, consisting of a combination of workers to impose a boycott, constituted the common law offense of criminal conspiracy -- an offense which was malum in se and triable by jury as of right. Even though this common law regulation of union activities has been supplanted by a comprehensive statutory system of regulation, the right to jury trial

still obtains. Whether the proceeding takes the form of an ordinary prosecution or a prosecution for contempt, the underlying conduct is equally serious. Petitioners therefore are constitutionally entitled to a jury when tried for contempt of the labor injunction issued in the instant case.

INTRODUCTION

This case arises out of a long and bitter strike encompassing the entire San Francisco area. In January, 1970, Local 21 of the International Typographical Union, AFL-CIO, went on strike against California Newspapers Inc. in Marin County, California.

In attempts to prevent deliveries to the struck employer, Local 21 established picket lines which ranged over two counties for a period of four years. Members of at least four other unions actively and courageously supported the striking union. Their sympathy for Local 21's cause apparently made these other workers willing to defy their own employers, and subsequently, a federal court order.

Management was similarly committed to its own cause. Rather than settle the dispute, the newspaper chose to withstand a ten month strike.

The factual situation involved in the instant case is typical of those cases which raise questions concerning labor's right to a jury trial in contempt proceedings. By their very nature, charges of contempt, particularly criminal contempt, tend to arise out of bitter strikes such as this one. Contempt trials will occur when a union and its members feel so strongly about the issues involved that they undertake actions which at least arguably violate a Court's order. They will occur when management or the National Labor Relations Board is willing to risk the years of bitterness engendered by fines and jail terms imposed upon unions and their members. Such contempt trials will arise when the parties are so firmly committed to their positions that for a time they are virtually at war.

The instant case and other similar ones are an outgrowth of the worsening economic conditions in this country. As the economy has moved into a deeper recession, union members' real wages have fallen and some workers have lost their jobs entirely. Many companies, faced with increased foreign and domestic competition and with growing uncertainty over their economic future, have been unwilling to grant wage increases or have demanded job-cutting efficiency gains. Labor relations,

which appeared calm during the last decade, again have become turbulent.[1]

During a time of particular economic hardship and devisiveness in the field of labor relations, it is particularly incumbent upon this Court to reaffirm the fundamental rights for which labor fought so hard in the past. The right to a jury trial in contempt proceedings is one of these rights, guaranteed both by the statutory wording and legislative history of §3692 of Title 18 of the United States Code, and by the Constitution of the United States itself.

1. In general, the National Labor Relations Board only infrequently brings contempt proceedings. "Until 1964, the peak years were 1941, 1942, and 1943. In 1941 and 1943, the Board filed contempt petitions in fifteen and thirteen cases, respectively, and in 1942, eleven cases were decided, five settled and ten were pending adjudication. The next twenty years were a period of remarkable inactivity. While unfair labor practice cases and court decrees continued to increase in number (and there is nothing to indicate a decrease in the incidence of violation of decrees), the Board filed, on the average, only three contempt cases per year and none at all in 1946, 1948, 1949, and 1955. Beginning in 1964, the number of petitions dramatically increased: fourteen in 1964, twelve in 1965, eighteen in 1966, twenty in 1967, twenty in 1968, twenty-three in 1969, twenty in 1970 and seventeen in 1971," BARTOSIC & LANOFF, Escalating the Struggle Against Taft-Hartley Contemnors, 39 U. CHI. L. REV. 255, 257 (1972).

I. *LEGISLATIVE HISTORY AND THE STATUTORY LANGUAGE OF 18 U.S.C. §3692 GRANT THE RIGHT TO A JURY TRIAL IN CONTEMPT PROCEEDINGS ARISING OUT OF INJUNCTIONS ISSUED PURSUANT TO THE TAFT-HARTLEY ACT*

A. History and the Statutory Development of the Labor Law Demonstrate the Justification for Selection of the Jury as Fact-Finer in Labor Contempt Cases.

Current turbulent labor relations are analagous to the bitter struggles in this country's past which led to expanded statutory protection of the right to jury trials in labor contempt cases. An understanding of the historical roots of this protection illuminate both the purposes of past statutes as well as those purposes furthered today by the statutory provision for a jury trial in any contempt arising out of a labor injunction issued under the laws of the United States. 18 U.S.C. §3692 (1970).

1. The Pre-Norris-LaGuardia Act Period

During the nineteenth and early twentieth century, the efforts of workers to gain a greater measure of economic protection through self-organization and concerted activity met determined opposition from employers and often, as well, from the government and the courts.

Among the worst forms of combined opposition to organizing efforts was the indiscriminate issuance and enforcement of labor injunctions. Any action taken by workers to promote their interests, including organizing, striking, picketing, handbilling, and speechmaking, often was enjoined by the courts at the whim of the employer. In their classic study, The Labor Injunction, Frankfurter and Greene described the abuses which labor injunctions engendered and the outrage which they provoked among workers and sympathetic citizens.[2]

---

2. See generally, F. FRANKFURTER & N. GREENE, THE LABOR INJUNCTION (1930).

In recent decisions, this Court has summarized the use of injunctions during this early period:

> In the early part of this century, the federal courts generally were regarded as allies of management in its attempt to prevent organization and strengthening of labor unions; and in this industrial struggle the injunction became a potent weapon that was wielded against the activities of labor groups. The result was a large number of sweeping decrees, often issued ex parte, drawn on an ad hoc basis without regard to any systematic elaboation of national labor policy. Boys Market, Inc. v. Retail Clerks Local 770, 398 U.S. 235, 250 (1970).

When workers appeared to violate these injunctions, employers would rush to court for contempt citations, hoping that jail sentences or fines would break the strike.[3] By the end of the last century, criticism of the arbitrary issuance, and even more arbitrary enforcement of these injunctions came from all sides. Critics focused upon the fact that the judge who issued the injunction also tried the facts and determined the sentence.

Legal experts such as the President of the American Bar Association strongly condemned the unfairness of the trial judge acting as fact-finder in such contempt proceedings.[4] Judge Henry Clay Caldwell, a presiding judge for the Eighth Circuit, noted in 1899:

---

3. See C. SWAYZEE, CONTEMPT OF COURT IN LABOR INJUNCTION CASES 100 (1935).
One of the major functions of the injunction-contempt system was to bypass juries, which, in the last quarter of the nineteenth century often refused to return convictions in criminal conspiracy cases arising from labor disputes. Nevertheless, in In re Debs, 158 U.S. 564 (1895) this Court ruled that this deliberate bypass of trial by jury was constitutional, thereby necessitating a legislative approach.

4. F. FRANKFURTER & N. GREENE, supra note 2, at 57 n. 40.

> . . . in proceedings for contempt of an alleged violation of the [labor] injunction, the judge is the lawmaker, the injured party, the prosecutor, the judge and the jury. It is not surprising that uniting in himself all these characters, he is commonly able to obtain a conviction. Trial by Judge and Jury, 33 Am.L.Rev., 321, 327 (1899).

Similarly, American Federation of Labor leader Samuel Gompers said that criminal contempt charges were worse than the old labor conspiracy charges, for the contempts were not tried by a jury, but rather were a "purely personal trial by a judge, a jeopardy depending on his peculiar notion of the fractured dignity of his court and his sympathy with one or the other of the parties at issue."[5]

Legislators at the time were especially concerned that contempt trials by judges were undercutting the legitimacy of the courts. Judge Clark of North Carolina was asked by the Commission on Industrial Relations in 1915 whether such trials by the judge had been "one of the causes of social unrest in the United States?" He answered, "Yes,sir; and undoubtedly will be more so, unless it is remedied." F. Frankfurter & N. Greene, supra at 57. Senator Walsh of Montana suggested that requiring juries in such contempt cases would strengthen the hand of the courts:

> An injunction has issued in an industrial dispute. It is charged that it has been violated. If the judge himself assumes to determine whether it has been or has not been, he can scarcely hope to make a decision that will not subject him to the charges if he finds the prisoner guilty, of subserviency to the capitalistic interests of hostility to organized labor, or if he shall acquit, to the pusillanimity of the ambition of the demagogue. In either case his court suffers in the estimation of no inconsiderable body of citizens. How much wiser it would be to call in a jury to resolve the simple question of fact as to whether the defendant did or did not violate the injunction?. . . Their verdict would silence caviling and strengthen in the minds of the people the conviction that the courts are indeed the dispensers of justice and not engines of oppression. 51 Cong. Rec. 14369 (1914) (Senate debate on Clayton Act)

Therefore, beginning in 1896, legislators at both the national and state levels introduced bills guaranteeing the right to a jury trial where contempt of a labor injunction was charged. Frequently, when states passed these bills, the courts would declare them unconstitutional or unwarranted intrusions by the legislature into inherent judicial power. See, Nichols v. Judge of Superior Court, 130 Mich. 187, 89 N.W. 691 (1902); State ex inf. Crow, Atty. Gen. v. Shepherd, 177 Mo. 205, 76 S.W. 79 (1903); Burdett v. Commonwealth, 103 Va. 838, 48 S.E. 878 (1904); Walton Lunch Co. v. Kearney, 236 Mass. 310, 128 N.E. 429 (1920).

In Section 22 of the Clayton Anti-Trust Act of 1914, 38 Stat. 738 (recodified in 1948 to 18 U.S.C. §§4402, 3691), Congress provided the first federal guarantee of the right to a jury trial in certain contempt cases arising out of labor injunctions. Specifically in those cases, where an offense was both a criminal offense and a violation of an injunction, the accused had a right to a trial by a jury of his peers if he were tried for contempt of the injunction.

Two lower federal courts declared even this limited reform unconstitutional. Michaelson v. United States ex rel. Chicago, St.P.,M.&O. Ry., 291 F.940 (7th Cir. 1923); In re Atchison, 284 F.604 (S.D. Fla. 1922).

2. *The Norris-LaGuardia Act*

In enacting the Norris-LaGuardia Act, 29 U.S.C. §101 et seq. in 1932 (originally enacted as Act of March 23, 1932, ch. 90, 47 Stat. 70), Congress recognized the severe need for major reforms in the area of labor injunctions and resulting contempt proceedings. In the House, Representative Schneider described these results of bench trials for labor contempts:

---

5. 4 AMERICAN FEDERATIONIST (1897).

> The judge whose order or decree had been violated, if in fact it had been violated. . .became the prosecuting officer, the jury and the judge all rolled up in one.
>
> He was the complainant, he was the prosecutor, he judged the facts without a jury, convicted the accused and sentenced him to jail for contempt of court. And these judges, setting at naught the most precious rights which ages of progress and struggle had made the heritage of all, expected the people to have anything but contempt for them and their orders. 75 Cong. Rec. 5515 (1932) (House debate on the Norris-LaGuardia Act).

Senator Norris, the sponsor of the Act, set forth even more graphically the need for a jury trial in contempts arising out of labor injunctions:

> And suppose one of these defendants disobeyed this injunction? He would not be violating any State law! He would only be doing what every human being has a right to do! No statute of any State or the Federal Government would preclude him from giving full publicity to all of the facts. But, under this judge-made law, a new statute was put in force--not by the legislature of the State, not by anyone having authority to enact a statute, but by the judge sitting on the Federal bench.
>
> And let us suppose, too, that for a violation of this order, one of the defendants was arrested. Where would he be tried? Would it be in the courts of the State where the offense is alleged to have been committed? No. It would be before the same judge who made the law. The judge who, acting as a legislator, made the law .... In such a case the defendant would have committed a crime as defined by this arbitrary law in the shape of an injunction--not a crime under any Federal law, but a crime made so by an arbitrary order of a judge, who is not supposed, under our Constitution and laws, to have any legislative authority. And if, when he was arrested, there was a dispute as to whether he has violated the order of the judge and thus committed a crime, would he have the right to law his case before a jury of his peers? Would the constitution and the laws of the State where the alleged offense was committed control in such a trial? No. No jury could sit in that case. Who would be the jury? The answer is, the same person who fixes the penalty. 75 Cong. Rec. 4507 (1932) (Senate debate on the Norris LaGuardia Act)

The new legislation provided that no federal court had jurisdiction to issue an injunction in any case involving or growing out of a labor dispute,[6] unless the employer met certain precise substantive standards enumerated in the Act. See 29 U.S.C. §101 et seq. Even where these standards were met, the federal court could grant injunctive relief only if it fulfilled numerous procedural safeguards designed to protect the rights of unions and workers.[7] At the time, any injunction issued by a federal court in a case involving a labor dispute had to fulfill these substantive and procedural requirements.

Recognizing the past history of contempt trials in labor cases, Congress specifically provided in Section 11 for a trial by jury in any contempt[8] proceeding arising under the new Act. [29 U.S.C.

---

6. "Labor dispute" was defined broadly to cover almost any type of labor-management controversy. 29 U.S.C. § 113 (c) (1970) (originally enacted as Act of March 23, 1932, Ch. 90, § 13, 47 Stat. 70).

7. E.g. , 29 U.S.C. § 107 requires a hearing on notice in open court with the opportunity for defendants bothto cross-examine the witnesses against them and to present testimony in their own behalf.

8. Section 11 had two exceptions to this jury trial requirement: "Provided, That this right shall nor apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to apply to the misbehavior misconduct, or disobedience of any officer of the court in respect to the writs, orders, or processes of the court." Ch. 90, § 11, 47 Stat. 73.

§111 (1946 ed.); Act of March 23, 1932, ch. 90, §11, 47 Stat. 73] In enacting this provision, Congress intended to avoid both the unfairness and the appearance of unfairness of bench trials for labor contempts. The legislators embodied in Section 11 of the Norris-LaGuardia Act an historic restoration of the protection which labor had enjoyed before criminal conspiracy prosecutions had been replaced by injunctions and summary contempt: in all cases where the federal courts could issue labor injunctions, an accused contemnor was entitled to a trial by a jury of his peers.[9]

3. *The National Labor Relations Act*

In 1935, Congress enacted the National Labor Relations Act (NLRA or the Wagner Act, 29 U.S.C. §151 et. seq.,49 Stat. 499) guaranteeing to workers the right to join unions, to strike and to engage in certain other protected activity. The new Act outlawed five specific "unfair labor practices" by employers, and established the National Labor Relations Board (NLRB) which was to enforce the Act by seeking court orders enforcing its decisions in the United States Courts of Appeals. Section 10(h) of the NLRA granted the Courts of Appeals equitable jurisdiction to enforce the NLRB's decisions and provided that in the exercise of this function "the jurisdiction of courts sitting in equity shall not be limited by [the provisions of the Norris-LaGuardia Act]." 29 U.S.C. §160(h).

While Section 10(h) prevented the application of the Norris-LaGuardia Act to Board orders issued on behalf of workers, it had no effect on the availability of injunctions against workers. Thus, the historic gain embodied in Section 11 of the Norris-LaGuardia Act was unaffected by the new Section 10(h) or by any other provision of the new NLRA. As had been true before, in all cases in which federal injunctions were issued against workers, those accused of contempt had the right to a trial by a jury of their peers.

---

9. With the exceptions cited in note 8 *supra*.

4. *The Taft-Hartley Act*

In the 1947 Labor-Management Relations Act (Taft-Hartley Act), 29 U.S.C. §141 et seq., 61 Stat. 136, the Eightieth Congress once again expanded the jurisdiction of the federal courts to allow them to issue injunctions against workers in labor disputes. This Act authorized federal injunctions in many of the situations in which employers had obtained them prior to the Norris-LaGuardia Act.

For example, in the pre-Norris-LaGuardia period, the United States government sought and obtained federal injunctions against strikes which purportedly threatened the public health and safety. See, e.g., In re Debs, 158 U.S. 564 (1895). Under Sections 206 through 210 of the new Taft-Hartley Act, 29 U.S.C. §§176-180, the Government again could seek injunctions against strikes which purportedly threatened the national health and safety.

Similarly, in the pre-Norris-LaGuardia period, many of the most important injunction and contempt proceedings involved federal court attempts to halt secondary boycotts. See, e.g., Gompers v. Bucks Stove and Range Co., 221 U.S. 418 (1911); Loewe v. Lawlor (Danbury Hatters), 208 U.S. 274 (1908); and Bedford Cut Stone Co. v. Journeymen Stone Cutters Ass'n., 274 U.S. 37 (1927). Under Sections 8(b)(4) and 10(l) of the new Taft-Hartley Act, the National Labor Relations Board was required to seek injunctions against such secondary boycotts. 29 U.S.C. §§158(b)(4), 160(l).

Finally, as one more example, in the pre-Norris-LaGuardia era employers sought and obtained injunctions against mass picketing. See, e.g., American Steel Foundaries v. Tri-City Trades Council, 257 U.S. 184 (1921). Under Sections 8(b)(1) and 10(j) of the new Act, the NLRB was authorized to do the same. 29 U.S.C. §§158 (b)(1), 160(j).

In view of these newly broadened powers of the federal courts to issue injunctions against workers involved in labor disputes, employers no longer had to seek injunctions themselves under the stringent provisions of the Norris-LaGuardia Act. Rather, they could file unfair labor practice charges with the NLRE and rely on the Board to seek the injunction for them under the more lax standards of the Taft-Hartley Act. As the United States Court of Appeals for the First Circuit noted, with these new Taft-Hartley injunctions, the Norris-LaGuardia injunction

became an "obsolescing kind of injunction." In re Union Nacional de Trabajadores 502 F. 2d. 113,119 (1st Cir. 1974)

For a year, from 1947 until 1948, there was no general statutory right to a jury trial in contempt proceedings arising out of these new labor injunctions. Section 11 of the Norris-LaGuardia Act by its terms provided for a right to a jury trial only for casea arising under that Act. 29 U.S.S.§111 (1946ed.). 47 Stat. 72, § 11.

Such an historic limitation of the right to a jury trial was not intended by the Eightieth Congress. With the broad new range of available injunctions, failure to provide for such a jury right created grave dangers for the rights of the accused and for the legitimacy of the courts. However, none of the Committee reports on the Taft-Hartley bill suggests that the legislators intended to re-establish bench trials in contempts arising under the new form of injunctions.[10] In their extensive comments upon the bills, neither Senator Taft nor Representative Hartley suggested any such change. Those friends of labor who opposed the bill also did not understand it to deprive accused contemnors of this hard-won right.[11]

Section 10(h) of the new Taft-Hartley Act of course provided that "the jurisdiction of courts sitting in equity shall not be limited by [the provisions of the Norris-LaGuardia Act]." 29 U. S. C. § 160(h). This section[12], however, was simply re-enacted from the 1935 N.L.R.A., and was seen as a routine provision which merely granted the Courts of Appeals jurisdiction to enforce Board orders. See, e.g., H.R. REP. No. 510, 80th Cong., 1st Sess. 57 (1947), and see infra, at page 23. No one in the 1947 Congress suggested that Section 10(h) deprived labor of its right to a jury trial in contempts arising out of the new Taft-Hartley injunctions.

---

10. See H.R. REP. No. 245, 80th Cong., 1st Sess. (1947); H.R. REP. No. 510, 80th Cong., 1st Sess. (1947).

11. Even the unsuccessful Ball amendment to the Labor-Management Relations Act, which if passed would have granted jurisdiction to the federal courts to issue injunctions on the petition of private employers, would have retained the jury trial guarantee for contempt prosecutions. See 93 CONG. REC. 4757 (1947) (Text of Ball Amendment, S. 1126); 93 CONG. REC.

12. See page 23 , infra. for a complete discussion of Section 10(h) and its effect on labor's jury trial right in contempts arising out of labor injunctions.

In short, the Eightieth Congress recreated a vast range of federal injunctions while inadvertently failing to provide for jury trials in contempt proceedings deriving from them. There is no other explanation for the thunderous Congressional silence: how could an important right occupying pages of debate only a few years before suddenly be waived without any substantial debate?

B. The Enactment of 18 U.S.C. § 3692 Affirmed the Right to a Jury Trial in Labor Contempt Proceedings Involving Injunctions Arising Under the Taft-Hartley Act.

The Eightieth Congress quickly corrected its inadvertent omission of the jury trial protection in labor contempt proceedings. In 1948, Congress substantially overhauled and modernized the federal criminal law. Act of June 25, 1948, ch. 645, 62 Stat. 683; see H.R. REP. No. 304. 80th Cong., 1st Sess. (1947). Representative Robison, who submitted the House Judiciary Committee Report, described the purpose of the act:

> [T] his bill [H.R. 3190] differs from the five codification bills which have preceded it on this calendar in that it constitutes a revision as well as a codification, of the federal laws relating to crimes and criminal procedure. 93 CONG. REC. 5048-5049 (1947) (House debate on the revision of the criminal code) (emphasis added)

As this Court has recognized, the 1948 Act was a "comprehensive revision" of the federal code.[13] Tinder v. United States, 345 U.S. 565, 569 (1953). The new Title 18 included broad changes in the punishments specified for federal crimes. See H.R. REP. No. 304, 80th Cong., 1st Sess. 2 (1947), and Tinder , 345 U.S. 565 (1953); In addition, the new Title 18

---

13. The Bill was entitled H.R. 3190, "A Bill to Revise, Codify and Enact into Positive Law, Title 18 of the United States Code, Entitled 'Crimes and Criminal Procedure,'"

included important changes in criminal procedure. H.R. REP. No. 304, supra., at 8. The bill was intended to clarify the old law and to reconcile apparently conflicting provisions.[14]

One of the more important provisions of the new Title 18 was section 3692. This section replaced the old Section 11 of the Norris-LaGuardia Act [previously 29 U.S.C. § 111 (1946) and eliminated the explicit limitation of the jury right to cases arising under the Norris-LaGuardia Act. Prior to 1947, the Norris-LaGuardia Act was the only statute which granted the federal courts jurisdiction to issue injunctions in situations involving labor disputes, and therefore the only statute under which contempt cases involving employees might arise. Until the Taft-Hartley Act was passed, Section 11 of the Norris-LaGuardia Act had effectively guaranteed workers the right to a jury trial in all contempt cases arising out of injunctions granted in labor disputes. The Taft-Hartley Act, while neglecting specifically to guarantee jury trials in contempt cases, did provide for the issuance of injunctions in cases involving labor disputes[15] in which certain kinds of prohibited practices allegedly occurred.[16]

The new Section 3692 was much broader than Section 11 of the Norris-LaGuardia Act, providing a jury right for

---

14. The House Report states that "Revision, as distinguished from codification, meant...[inter alia] reconciliation of conflicting laws...." H.R. REP. No. 304, supra, at 2.

15. The Taft-Hartley Act broadly defined "labor dispute" to include:

> ....any controversy concerning the terms, tenure, or conditions of employment, or concerning the association of representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proxinate relation of employer and employee. 29 U.S.C. § 152 (9) (emphasis added).

With the exception of the insertion of word "tenure," this is the same definition as appeared in Section 13 (c) of the Norris-LaGuardia Act, 29 U.S.C. § 113(c) (1970 ed.), 47 Stat. 73 (1932).

16. For the most part, Taft-Hartley injunctions issue in situations involving alleged "unfair labor practices." For example, under Section 10(j) and 10(l) of the Act, a United States District Court may enjoin, pending a Board hearing, conduct which purportedly constitutes an unfair labor practice.

any contempt arising out of injunctions granted pursuant to federal laws in cases involving labor disputes:

> In all cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed. 18 U.S.C. § 3692 (emphasis added)

As the United States Court of Appeals for the First Circuit stated, Section 3692 "is...not an ordinary statute, but one infused with a national policy arrived at after a painful and lengthy period of strike and debate." In re Union Nacional de Trabajadores, 502 F.2d 113, 118 (1st Cir. 1974)

In the 1948 Congressional debates and reports concerning the new Section 3692, there was no specific mention of the evident intent of the legislators to broaden the jury trial right to include contempt cases arising out of Taft-Hartley injunctions.[17] This is not surprising however, given the language of the section. By referring in the plural to "laws" governing these injunctions, Section 3692 makes clear the legislative intent to extend the jury trial right to contempt cases arising out of Taft-Hartley injunctions. This section merely reaffirmed the jury trial right of workers and labor organizers which had previously existed under the Norris-LaGuardia Act.

Such alleged unfair labor practices arise out of labor disputes and the labor disputes do not cease upon the filing of an unfair labor practice charge. The instant case, for example, arose out of a labor dispute between Typographers Local 21 and California Newspapers, Inc. The labor dispute, which eventually involved four other unions, did not cease when the U.S. District Judge issued an injunction because of alleged unfair labor practices.

In providing for the issuance of injunctions in such cases, the Taft-Hartley Act is a law of the United States governing the issuance of injunctions in cases growing out of labor disputes.

17. Since 1948, members of both the Senate and House Judiciary Committees have made clear that Section 3692 was in fact intended to insure that the jury trial protection was extended to

Furthermore, Section 3692 was passed in the context of a broad legislative mandate to enact new, positive law. The explicit provision for jury trials in contempt proceedings deriving from injunctions arising out of the laws of the United States governing labor injunctions reflects this broad mandate. Congress thus made clear its intention to provide "the same jury trial requirement as had previously attached to Norris-LaGuardia proceedings." In re Union Nacional de Trabajadores, 502 F.2d 113, 119 (1st Cir. 1974)

The burden is upon the Respondent here to demonstrate that Congress intended to exclude Taft-Hartley injunctions from the protections of Section 3692. As

---

all criminal contempt prosecutions which grew out of injunctions issued in the context of labor disputes. In 1959, for example, Senator Kennedy and Senator Ervin offered an amendment, which successfully passed as Section 608 of the Labor Management Reporting and Disclosure Act (Landrum-Griffin Act), 29 U.S. C. § 528, 73 Stat. 541 § 608, providing for a jury trial in all cases of criminal contempt arising under that Act. In setting forth the purpose of this amendment, Senator Ervin explained:

> ...this amendment which I offer...merely provides for jury trials in criminal contempt cases. In that way it would harmonize with the pattern of law which has prevailed in labor controversies since 1914, when the Clayton Act was adopted.
>
> The purpose of the amendment is to make it plain that it is not the object of Congress in enacting the present bill into law to change the pattern of legislation which has been in in effect since 1914. 105 CONG. REC. 6730 (1959) (Senate Debate on the Landrum-Griffin Act) (emphasis added).

Similarly, in the debates over the 1957 Civil Rights Act, Representative Smith of Virginia, who had been a member of the House Judiciary Committee which had overseen the 1948 revision of Title 18 and the enactment of 18 U.S.C. § 3692, argued persuasively that the right to a jury trial had been extended to injunctions under the Taft-Hartley Act. Representative Smith stated that the waiver provision in the Taft-Hartley Act did not supersede Section 11 of the Norris-LaGuardia Act and that regardless of any apparent conflict created by the enactment of Taft-Hartley, "in 1948 the Congress ...enacted Title 18 into positive law...[and] simply transferred [Norris-LaGuardia Act § 11, 29 U.S.C. § 111 (1946)] and broadened it." 103 CONG. REC. 8536 (1957). See also the further statements of Representative Smith at 103 CONG.REC. 8536-8537, 8684 (1957).

this Court has noted, the words of Title 18 enacted by the 1948 Act were not chosen lightly. Since there is no evidence of such a limited purpose, Section 3692 should be construed according to the broad meaning of its unambiguous language and should be held to provide the right to a jury trial to the Petitioners in this case. [18]

C. The Purposes Furthered By 18 U.S.C. § 3692 Require That Persons Accused Of Violating A Taft-Hartley Injunction In The Context Of A Labor Dispute Be Entitled to A Trial By A Jury Of Their Peers.

1. The Purposes of 18 U.S.C. §3692 and of The Taft-Hartley Act May be Accommodated.

As discussed above, Section 3692 emerged from a painful fifty-year debate over the provision of jury trials in contempts arising out of labor injunctions. Congressmen, Senators, and others repeatedly stressed two overriding purposes for such protection. First, it was inherently unfair to workers to have the judge who issued the injunction try the contempt case, since in the contempt trial the judge, whose background and personal sympathies were most likely to be with employers, became the lawmaker, injured party, prosecutor, jury, and judge. Second, regardless of how fair the judge-tried contempt could be in fact, it appeared unfair to workers and undercut the legitimacy of the federal courts and their orders.[19]

These two concerns, which are apparent throughout the fifty-year debate, were valid in 1948 and are valid in 1974. In both years, hundreds of thousands of workers were engaged in strikes. In both years, employers sought and obtain-

---

18. Respondent suggests a technical limitation of Section 3692 to cases arising under the Norris-LaGuardia Act. As this Court has recognized in discussing another provision of the 1948 Act, "A highly technical distinction of this sort, which could easily have been spelled out, cannot be imposed on general words...." Tinder v. United States, 345 U.S. 565, 569-570 (1953).

19. See pages 8 ff. supra.

ed NLRB assistance in securing injunctions against certain prohibited practices. And in the most bitter strikes in both years, these injunctions were violated and the violaters were tried for civil and criminal contempts.[20]

In these contempt trials, it made little difference that the Board, rather than the employer, had sought the injunction. Because the Taft-Hartley Act clearly provided that only federal judges could issue injunctions and restraining orders requested by the Board, all of the dangers of judge-tried contempts were again present. It still was the judge's order which had been violated, and his dignity and authority which had been challenged. Again he was the lawmaker, prosecutor, jury, and judge. And if that judge imposed contempt penalties, his verdict still would appear unfair to the accused.

In ruling on the instant case, neither the Ninth Circuit nor the district court considered the policies which Section 3692 seeks to further. Both ignored this Court's admonition in Mastro Plastics Corp. v NLRB, 350 U.S. 270. 285 (1956), to consider the purposes of the respective statutes; both based their decisions primarily upon narrow and technical readings of the words of Section 3692.[21] The Ninth Circuit's only analysis of the statutory purposes consisted of the following two sentences:

---

20. See pages 6-7 supra.

21. Even if one limits consideration to the words of Section 3692, the Ninth Circuit's decision is unpersuasive. That court held that the Taft-Hartley Act was included in "the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute." Hoffman v. I.L.W.U. Local 10. 492 F. 2d 929, 934 (9th Cir. 1974). As discussed above, the Taft-Hartley Act. according to its own terms, governs the issuance of injunctions and restraining orders in labor disputes. See note 17, supra. There is no justification for the Ninth Circuit's extremely narrow reading of the broad words which deliberately were chosen by the Reviser and Congress in 1948. See supra.

> The purposes of the Norris-LaGuardia Act to limit and restrict the equitable powers of the courts to intervene in labor disputes between private employers and unions are not the same as the powers involved in the administrative scheme of the Labor-Management Relations Act and its amendments. There is no reason to believe that Congress intended its grant of equitable powers to district courts as embodied in section 10(l) of the Act, 29 U.S.C. §160 (l), to be repealed by the recodification of Section 11 of the Norris-LaGuardia Act, 29 U.S.C. §111, into 18 U.S.C. §3692. [Citations omitted.] Hoffman v. I.L.W.U. Local 10, 492 F.2d 929, 934, (9th Cir. 1974)

Of course, as the Hoffman court stated, the purposes of the Taft-Hartley Act differ from those of the Norris-LaGuardia Act. But this general assertion provides no analysis of whether the reasons for having jury trial protections for violations of Taft-Hartley injunctions are analagous to the reasons for having such protections in Norris-LaGuardia situations.

Moreover, despite the Hoffman court's casual assertion to the contrary, there is considerable "reason to believe" that Congress intended Section 3692 to apply to Taft-Hartley injunctions.[22] Section 3692 does not "repeal the equitable powers given to the District Court by Section 10(l) of the Act," but rather gives the accused contemnor the option of having a jury participate in the fact-finding process in those bitterly divided situations where contempt proceedings are instituted. The District Courts retain jurisdiction both to issue labor injunctions (which is all that Section 10(j) and 10(l) of the Taft-Hartley Act intended)[23] and to punish contempts after the fact-finding process is concluded.

---

22. See page 15 ff. supra.

23. See pages 24-25 infra.

By authorizing juries in the few cases where contempts arise under the Taft-Hartley Act, Section 3692 does not defeat the purpose of the Act. The Board, the expert federal agency, still determines when to seek preliminary injunctions and when unfair labor practices have been committed. In contrast, the federal jury is asked only to determine "whether individuals or groups did in fact disobey, with requisite knowledge and intent, a court order so as to impose criminal sanctions. The fact situations and evidence involved in such determinations are ordinary grist for the judgment of juries." In re Union Nacional de Trabajadores, 502 F.2d. 113, 119 (1st Cir. 1974).

Thus, the application of Section 3692 to Taft-Hartley injunctions will not frustrate the purposes of the Taft-Hartley Act. However, the failure to apply Section 3692 to Taft-Hartley contempt situations will frustrate the pusposes of Section 3692. Such a construction of Section 3692 would limit the right to a jury trial to contempts arising from a narrow range of injunctions in labor disputes., i.e., to those arising under the Norris-LaGuardia Act. Since the vast majority of injunctions in labor disputes today arise under the Taft-Hartley Act[24] this narrow construction of Section 3692 would in effect confine the right to a jury trial to the fringes of national labor policy. At the core of national labor policy, all of the evils of judge-tried contempts would arise again. As the First Circuit held in a case arising under Section 10(j) of the Taft-Hartley Act:

> ...while jury participation seems as appropriate as ever in criminal contempt proceedings reposing sole dispositive power in the judge who granted the injunction at the request of the Board, would be asked to mete out punishment if he finds that his order has been deliberately flouted. Appropriateness is not enhanced by the judge predetermining, before the extent or seriousness of the disobedience can be fully known, the maximum fines or sentences to be imposed in order to decide whether a jury trial is mandated by the constitution. In re Union Nacional de Trabajadores, 502 F.2d 113, 120 (1st Cir. 1974).

24. See page 13 supra.

This Court repeatedly has held that even apparently inconsistent labor statutes should be construed to provide the fullest realization of the purposes of each statute. See Mastro Plastics Corp. v. NLRB, 350 U.S. 270 (1956); Boys Market v. Retail Clerks Local 770, 398 U.S. 235, (1970). As Mr. Justice Brennan stated in a dissent which became the majority in Boys Market:

> ...the two provisions do coexist, and it is clear that they apply to the case before us in apparently conflicting senses. Our duty, therefore, is to seek out that accommodation of the two which will give the fullest possible effect to the central purposes of both. Sinclair Refining Co. v. Atkinson, 370 U.S. 195, 216 (1962)

In this case, Section 3692 has two important and fundamental purposes: preserving fairness for accused and legitimacy for the courts. In these turbulent times, the Court should further both purposes by ensuring that the jury trial for labor contempts remains at the center of national labor policy. As its plain words intended, Section 3692 should guarantee to the Petitioners in thise case, and to all accused of violating Taft-Hartley injunctions which arise out of labor disputes, the historic right to a trial by a jury of their peers.

2. *Section 10(h) of the Taft-Hartley Act Does Not Conflict with Granting Accused Contemnors a Right to a Jury Trial.*

In In re Union Nacional de Trabajadores, 502 F.2d 113 (1st Cir. 1974), the National Labor Relations Board argued before the First Circuit that Section 10(h) of the Taft-Hartley Act precluded granting the Petitioner's demand for a jury under Section 3692. This argument, which undoubtedly will be repeated in this Court, fundamentally misunderstands both the purpose of Section 10(h) and the purpose of Section 3692.

Section 10(h) of the National Labor Relations Act, as incorporated into the Taft-Hartley Act provides:

> When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying and enforcing as so modified, or setting apart in whole or in part an order of the Board, as provided in this section, the jurisdiction of the courts sitting in equity shall not be limited by the act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes." 29 U.S.C. §160 (h) (emphasis added)

Section 10(h) simply grants jurisdiction to the United States Courts of Appeals sitting in equity to enforce orders of the National Labor Relations Board without regard to the provisions of the Norris-LaGuardia Act. Section 10(h) was present verbatim in the 1935 National Labor Relations Act, which authorized court action only to enforce Board orders, and it simply was re-enacted as part of the Taft-Hartley Act without significant comment. The Taft-Hartley Conference Report makes explicit the limited purpose of Section 10(h):

> Sections 10(g), (h), and (i) of the present act, concerning the effect upon Board's orders of enforcement and review proceedings, making inapplicable the provisions of the Norris-LaGuardia Act in proceedings before the courts [for enforcement and review] were unchanged by either the House bill or the Senate amendment and are carried into the conference agreement. H.R.REP. No. 510, 80th Cong. 1st Sess. 57 (1947) (emphasis added)

Merely stating this limited purpose illuminates the fallacies of the Board's argument. In the first place, Section 10(h) on its face applies only to proceedings to enforce Board orders in United States Courts of Appeals. Sections 10(j) and 10(l), [29 U.S.C., §§160(j), 160(i) (1970 ed.)], providing

for preliminary injunctions in certain circumstances, and Sections 301 and 208, [29 U.S.C., §§185, 178 (1970 ed.)], providing for national emergency situations all contain their own jurisdictional grants. Thus, whatever effect Section 10(h) may have on the jury right in contempts arising out of violations of Board orders, it is quite simply inapplicable to injunctions obtained under Sections 10(j), 10(l), 301 and 208.

Secondly, since Section 10(h) was a mere re-enactment of the same section in the 1935 NLRA, there is no evidence that it was intended to deprive labor of the fundamental right to a jury trial in contempt situations.[25] In 1948, the Eightieth Congress eliminated any possible misunderstanding by broadening Section 3692 to include all labor contempts and by moving the broader section from the Norris-LaGuardia Act to Title 18. Even if Section 10(h) did apply to Sections 10(l) and 10(j), it only provides that the jurisdiction of the courts will not be affected by the provisions of the Norris-LaGuardia Act. Since Section 3692 does not even purport to limit the jurisdiction of the court, and since it is not part of the Norris-LaGuardia Act, Section 10(h) does not limit the effect of Section 3692.

Finally although Amicus would contend that Section 3692 provides for a jury trial in all contempts arising out of labor injunctions, it is especially clear that in cases of criminal contempt of a labor injunction, the accused is statutorily entitled to a trial by a jury of his peers. 18 U.S.C. §3692; In re Union Nacional de Trabajadores, 502 F. 2d 113 (1st Cir. 1974). A criminal contempt proceeding does not enforce an order, but rather vindicates the authority of the court by punishing the contumacious party. Gompers v. Bucks Stove & Range Co., 221 U.S. 418, 444-445 (1911). It is not part of the original equitable cause of action, but rather is an independent action at law and "no part of the original cause." Michaelson v. United States, ex rel. Chicago, St. P., M. & O. Ry., 266 U.S. 42, 64-65 (1924).

---

25. See pages 14, 25 supra.

Section 10(h) makes inapplicable the provisions of the Norris-LaGuardia Act when a court sits in equity for "granting . . . a restraining order, or . . . enforcing, modifying, and enforcing as so modified, or setting aside . . . an order." 29 U.S.C. §160(h). Since criminal contempts are not equitable actions and since they are not for the purpose of "enforcing" the order, Section 10(h)'s limitations are not applicable to criminal contempt proceedings. In re Union Nacional de Trabajadores, 502 F.2d 113 (1st Cir. 1974).

The facts of the instant case raise the question of jury trials only in relation to criminal contempt proceedings arising out of labor injunctions, and therefore call upon this Court to rule solely upon this specific issue. Section 10(h) of the Taft-Hartley Act is clearly not applicable to criminal contempts.

II. PETITIONER UNION WAS CONSTITUTIONALLY ENTITLED TO A JURY TRIAL BECAUSE OF THE INTRINSICALLY SERIOUS NATURE OF THE OFFENSE AS WELL AS THE SEVERE NATURE OF THE PUNISHMENT IMPOSED.

A. Although All Criminal Contempts May Not Be Intrinsically Serious By Constitutional Standards, Particular Contempts May Be Deemed Serious On the Basis of Either the Nature of the Punishment or the Nature of the Offense.

In recent years, this Court has relied exclusively on the nature of the punishment in determining whether particular offenses are serious or petty, and therefore, triable by jury. The criterion usually employed in conventional criminal prosecutions is the statutorily established maximum punishment. See, e.g. Baldwin v. New York, 399 U.S. 66 (1970); Duncan v. Louisiana, 391 U.S. 145 (1968).

However, in cases of criminal contempt, since there is usually no statutorily established maximum punishment, the Court has relied instead on the actual punishment imposed. See, e.g. Taylor v. Hayes, 94 S. Ct. 2697 (1974); Codispoti v. Pennsylvania, 94 S. Ct. 2687 (1974); Frank v. United States, 395 U.S. 147 (1969); Bloom v. Illinois, 391 U.S. 194 (1968); Cheff v. Schnackenberg, 384 U.S. 373 (1966). But cf. Dyke v. Taylor Implement Co., 391 U.S. 216 (1968). A statutory maximum punishment is regarded as an "objective criteri[on] reflecting the seriousness with which society regards the offense." Baldwin, 399 U.S. at 68. In contrast, the actual punishment imposed in most criminal contempt cases, where there is no statutory maximum, while admittedly a far less reliable and far less objective indication of the seriousness of the offense, is nonetheless relied on as the "best evidence" available. Duncan, 391 U.S. at 162, n. 35.

In practice however, the judge rules on the alleged contemnor's demand for jury trial at the beginning of the proceeding, whereas sentence is not imposed until the end. As a result the judge is concerned primarily with setting a sentence which is permissible within the constraint of the prior jury ruling and hardly provides an objective indication of the seriousness of the offense.

Amicus submits that the actual sentence imposed need not be relied on in the instant case because of the availability of another criterion which provides a far more reliable, far more objective indication of the seriousness of the instant offense-- i.e. its inherent "moral" nature, particularly whether it was malum in se and triable by jury at common law. This criterion has traditionally been employed by this Court in determining the existence of a right to jury trial in both criminal and civil cases. See, e.g. Pernell v. Southall Realty, 94 S. Ct. 1723 (1974).

Some of the earlier conventional criminal cases to come before the Court were decided exclusively on the basis of the inherently "evil" nature of the offense. Callan v. Wilson, 127 U.S. 540, 555-56 (1888) involved a union member tried without a jury for the misdemeanor of unlawfully combining to impose a boycott. The Court held that, notwithstanding its present misdemeanor status, this offense constituted the serious common law crime of conspiracy, and therefore that Callan's demand for a jury trial should have been honored. Similarly, in District of Columbia v. Colts, 282 U.S. 63, 73 (1930) the Court concluded that "driving to endanger" constituted the indictable common law crime of public nuisance, and ruled that Colts was entitled to a jury trial.[26]

---

26. Having concluded that Colts was entitled to a jury trial solely on the basis of the serious common law nature of the offense, the Court declined the government's invitation to consider the comparatively trivial statutory maximum penalty ($100 fine or 30 days imprisonment). The Court thereby rejected, sub silentio, the Government's argument that such an allegedly trivial penalty rendered the offense petty by contemporary standards, no matter how serious it may once have been on the basis of common law standards. See Colts, 282 U.S. 67, 68 (Argument for Petitioner).

In two other relatively early cases, Schick v. United States, 195 U.S. 65 (1904), and District of Columbia v. Clawans, 300 U.S. 617 (1937), the Court concluded that respective violations of an oleomargarine statute and a licensing statute were not of an inherently serious nature (i.e. malum in se), but only malum prohibitum. Thus, the Court went on to consider the second criterion - the severity of the authorized punishment. While indicating that the severity of the punishment might render an otherwise petty offense serious, the Court concluded that respective authorized maximum punishments of a $50 fine, and a $300 fine or 90 days imprisonment, were not sufficiently severe to have such an effect in those two cases.[27]

It was not until more recent years that two conventional criminal cases reached the Court in which the authorized punishment was deemed sufficiently severe to mandate a conclusion that the offenses were serious rather than petty. See, Duncan v. Louisiana, 391 U.S. 145 (1968) (maximum of two years imprisonment); Baldwin v. New York, 399 U.S. 66 (1970) (maximum of one year imprisonment; six month rule established for other cases).

Although Baldwin suggests that the authorized maximum penalty has today become the "most relevant" criterion of the seriousness of an offense,[28] it also reaffirms the continuing relevancy of the nature of the offense as an alternative criterion:

Similarly, in Callan v. Wilson, 127 U.S. 540, once the Court concluded that the offense was serious by common law standard it ceased further inquiry. The decision contains no indication of the statutory maximum penalty, nor is there any discussion of the relatively trivial sentence actually imposed--a $25 fine, or, in default thereof, 30 days imprisonment.

27. Thus the Court did accept the converse of the argument rejected in Colts, note 26, supra, that is, a severe punishment may render an otherwise petty offense serious; but a trivial punishment may not render an otherwise serious offense petty.

28. Baldwin v. New York, 399 U.S. at 68:

> [W]e have sought objective criteria reflecting the seriousness with which society regards the offense [Clawans], and we have found the most relevant such criteria in the severity of the maximum authorized penalty. (emphasis added)

> Decisions of this Court have looked to both the nature of the offense itself, as well as the maximum potential sentence...Baldwin v. New York, 399 U.S. at 69, n.6 (emphasis supplied).[29]

Similarly, in the criminal contempt cases, notwithstanding the emphasis on the actual sentence imposed, the Court has also considered "the nature of the offense," concluding:

> Criminal contempt, intrinsically, and aside from the particular penalty imposed, was not deemed a serious offense requiring the protection of the constitutional guarantees of the right to a jury trial. Bloom v. Illinois, 391 U.S. at 196-197 (emphasis supplied).

This general statement may be accurate with respect to the vast majority of cases, in which criminal contempt merely constitutes "an offense sui generis" (i.e., malum prohibitum). Cheff v. Schnackenberg, 384 U.S. at 380.[30]

But the Court, in the following interpretation of Cheff, has also recognized that:

Cf. Colts, 282 U.S. at 73, expressing an earlier view of the most relevant criterion:

> Whether a given offense is to be lcassed as a crime, so as to require a jury trial, or as a petty offense, triable summarily without a jury, depends primarily upon the nature of the offense. (emphasis added)

29. Justice Harlan, although dissenting from most of the Court's decision, also recognized that "the nature of the offense and the severity of punishment are two distinct considerations." Baldwin v. New York 399 U.S. at 121, n. 7. See also, Id. at 120 (petty - serious distinction seen as rooted in the common law).

30. In Cheff, the offense consisted of the violation of a Circuit Court of Appeals injunction enforcing a cease-and-desist order of the F.T.C. pending review.

> [C]riminal contempt [is] an offense applied to a wide range of conduct including conduct not so serious as to require jury trial absent a long sentence. Duncan v. Louisiana, 391 U.S. at 162, n. 35 (emphasis supplied. See also, Frank v. United States, 395 U.S. 147 (1969).[31]

Although most of that "wide range of conduct" constituting criminal contempt is of the "not so serious" variety, described in the above quote from Duncan, the Court has left open the possibility that in an appropriate case, the contemptuous conduct might be so inherently serious as to require a jury trial (as was the case in Callan v. Wilson, 127 U.S. 540 and District of Columbia v. Colts, 282 U.S. 63.) Amicus submits that the alleged contemptuous conduct in the instant case is quite serious indeed, and therefore the Court should now consider the question left open since Duncan: may the serious nature of particular contemptuous conduct be sufficient to trigger the right to jury trial? This point will be discussed immediately below.

B. The Instant Offense, Consisting of a Combination of Workers, is of an Inherently Serious Nature, and Should Have Been Tried by Jury.

The conduct alleged in the instant case is a combination of workers to impose a boycott. Within the confines of the present-day comprehensive, statutory system of administrative and judicial regulation, which originated in the Norris-LaGuardia and Wagner Acts of the 1930's, this conduct is deemed a criminal contempt because it violates an injunction issued by a District Court Judge.

However, before the regulation of labor relations was pre-empted by statute, this same conduct would have been

---

31. In Frank, after referring to the same footnote of Duncan, quoted p. 31 , supra, the Court noted:

> But a person may be found in contempt of court for a great many different types of offenses, ranging from a disrespect for the court to acts otherwise criminal. 395 U.S. at 149 (emphasis added)

regulated by a common law criminal conspiracy prosecution, or a common law civil injunction proceeding, combined with summary, non-jury contempt. Moreover, these historic precedents still provide an objective indication of the "seriousness with which society regards the offense," Baldwin, 399 U.S. at 68, quoted note 30, supra, and also provide evidence that summary contempt proceedings were first applied to combinations of workers in a deliberate attempt to bypass the right to jury trial, which may be unconstitutional. (See pages infra).

1. The Alleged Combination of Workers Constituting the Instant Contempt Also Constitutes the Serious Offense of Criminal Conspiracy, Which Was Triable by Jury at Common Law.

At common law, combinations of workers were regarded as criminal conspiracies. See, generally, SAYRE, Criminal Conspiracy, 35 HARV. L. REV. 393 (1922).

Although one historian has found evidence of a criminal conspiracy prosecution against workers in New York City in 1741,[32] the 1806 Philadelphia Cordwainers' Case[33] appears to be the first reported case, and is generally regarded as the first American labor case of any type.[34] Eight leaders of the striking cordwainers were indicted and arrested on the charge of conspiring to raise their wages. This had the desired effect of breaking the strike. NELLES, The First American Labor Case, 41 YALE L.J. 165, 168(1931). They were subsequently tried by a jury, found guilty, and fined $8 each. Id., at 193.

---

32. BONNETT, THE ORIGIN OF THE LABOR INJUNCTION, 5 SO. CAL. L. REV. 105, 113, (1931). The defendants were journeymen bakers, who combined for the purpose of raising wages. The charges were instigated by the master bakers who employed them.

33. 3 COMMONS & GILMORE, DOCUMENTARY HISTORY OF AMERICAN INDUSTRIAL SOCIETY, 59-248 (1910).

34. See e.g., NELLES, The First American Labor Case, 41 YALE L. J. 165 (1931); COX & BOK, CASES AND MATERIALS ON LABOR LAW, 22 (7th Ed. 1969).

Notwithstanding some decisions limiting their use,[35] criminal conspiracy prosecutions continued throughout the nineteenth century and into the early twentieth century.[36] For example, in 1888 this Court concluded that a combination to impose a boycott constituted a criminal conspiracy, which was deemed an inherently serious offense, mandating a jury trial upon demand. Callan v. Wilson, 127 U.S. 540 (1888).[37]

2. The Use of Summary Contempt Proceedings in Cases Involving Combinations of Workers Originated as a Deliberate Attempt to Bypass the Common Law Right to Jury Trial and Must Now be Regarded as Unconstitutional.

By the last quarter of the nineteenth century the criminal conspiracy prosecution had outlived its usefulness to employers. During the period from the Philadelphia Cordwainers' Case (1806) to the late 1870's, the likelihood of conviction in such cases diminished substantially.

In 1806 American juries were composed of propertied aristocrats who were generally hostile to the working classes, and therefore more than ready to return guilty verdicts.[38] However, by the late 1870's and beyond, the composition of both the electorate and juries had been significantly democratized. There had also been a dramatic shift in public opinion. The emerging industrial giants and railroad monopolies were seen as the evil of the day. And the cause of the emiserated working classes

---

35. See, e.g., Commonwealth v. Hunt, 4 Metc. (Mass.) 111 (1842) (combination must be for unlawful p urpose); Cf. State v. Donaldson, 32 N.J.L. 151 (1967) (Combination for "oppresive" purpose; conduct not otherwise illegal).

36. See, e.g., State v. Dalton, 134 Mo. App. 517, 114 S.W. 1132 (1908), and discussion in SAYRE, 35 HARV. L. REV., supra p. 32, at 415-416.

37. In Callan the boycott was imposed when union members refused to work with a fellow union member. In the instant case the boycott was imposed when members of petitioner union, who were secondary employees, refused to deliver newsprint to the primary employer.

38. See SAYRE, Criminal Conspiracy, 35 HARV.L.REV. 413-414 (1922)

had become not only respectable, but even noble. United States Senators defended workers charged with conspiracy without fee. William McKinley (later President McKinley) was elected to Congress for the first time in 1876 after having acted as voluntary defense counsel for striking mineworkers charged with rioutous assault. In sum, the climate was such that it was very difficult to rely on juries to return any convictions against workers for union activities.[39]

Thus by the time of the Railway Strike of 1877 employers needed a new way to manipulate the law (and courts) against the workers— a way which would eliminate the role of the now-mischievous jury. And of course, the answer was found in the system of civil injunction, coupled with summary, non-jury contempt.[40]

Whatever objections labor may have had to the use of criminal conspiracy prosecutions, at least they provided the significant safeguard of trial by jury. In contrast, the system of injunction-contempt eliminated this one safeguard. Thus labor's opposition to the injunction and non-jury contempt was far more vigorous than its opposition to the criminal conspiracy prosecution. See, e.g, the comments of Samuel Gompers, supra, p. 8 .

Labor first attempted to attack the injunction-contempt system, with its deliberate bypass of the jury trial, in the courts. But as might have been expected in the prevailing judicial climate, the courts, including this Court, were unwilling to conclude that this usurpation of jury trial was unconstitutional. See, In Re Debs, 158 U.S. 564 (1895).[41]

In Debs the Court concluded that the bypass of jury trial was justified for the following reason:

> To submit the question of disobedience to another tribunal, be it a jury or another court, would operate to deprive the proceeding of half its efficiency. 158 U.S. 595.

Notwithstanding Debs, during the twentieth century this Court has gradually extended the full panoply of due process rights to alleged criminal contemnors, including most recently, the right to jury trial. See, Bloom v. Illinois, 391 U.S. at 204-06. In the process, the Court has also explicitly repudiated the foregoing analysis in Debs, concluding that neither "efficiency" nor "the desirability of vindicating the authority of the court" were sufficient grounds for depriving alleged contemnors of their constitutional right to jury trial. Bloom, 391 U.S.at 208.

Amicus therefore submits that judged by today's standards, the deliberate bypass of jury trial in Debs, in the interest of "efficiency," effected through the use of summary contempt, would be unconstitutional. And this is not merely an academic matter; for if this Court should reject the statutory argument in the instant case, the constitutional question again emerges because workers are being criminally prosecuted for activities which were triable by jury at common law.

3. *Workers Charged With Combining to Impose a Boycott are Entitled to a Jury Trial Regardless of the Form of the Proceeding in Which Criminal Sanctions Are Sought to Be Imposed.*

In effectively overruling the jury trial holding in Debs, this Court belatedly recognized that there is no practical distinction between convictions for ordinary crimes and convictions for criminal contempt:

> In modern times, procedures in criminal contempt cases have come to mirror those used in ordinary criminal cases. Our experience teaches us that convictions for criminal contempt, not infrequently resulting in extremely serious penalties, see United States v. Barnett..(Goldberg J., dissenting), are indistinguishable from those obtained under ordinary criminal laws. If the right to jury trial is a

---

39. See NELLES, A Strike and Its Legal Consequences--An Examination of the Receivership Precedent for the Labor Injunction. 40 YALE L. J. 507, 518-20, 529 (1931).

40. See generally, NELLES, 40 YALE L. J., supra, note 40; BONNETT, 5 SO.CAL. L.R. , supra, note 41; FRANKFURTER & GREENE, THE LABOR INJUNCTION, supra, p.

41. Labor then turned to a legislative approach which culminated in the enactment of the Norris-LaGuardia Act 36 years later. See discussion supra, pp. 9-12.

> fundamental matter in other criminal cases, which we think it is, it must also be extended to criminal contempt cases. Bloom v. Illinois, 391 U.S. at 207-8 (emphasis added).[42]

Before reaching the above-quoted conclusion in Bloom, the Court had noted that criminal contempt proceedings and ordinary criminal proceedings served the same ultimate function: "protection of the institutions of our government and enforcement of their mandates." 391 U.S. at 201. This was especially true when the "criminal contemptuous conduct may violate other provisions of the criminal law," but it was also true "even when this is not the case." Id., 391 U.S. at 201.

Thus Amicus submits that the conduct alleged in the instant case doubly qualifies as a serious offense, because it constitutes a common law criminal conspiracy to impose a boycott, Callan v. Wilson, 127 U.S. 540 (1888), and also a criminal contempt, because it involves disobedience of a court order. Moreover, these two aspects should be viewed cumulatively and not in isolation. If the conduct involved in the instant case constitutes a serious common law offense, as it does, it would be fairly ironic to suggest that because it also constitutes criminally contemptuous disobedience of a court order that it is somehow rendered less serious or less of a crime. If anything, this dual aspect of the conduct renders it more serious.

Nor may it be argued that society today regards a combination to impose a boycott as a less serious offense than it may have been at common law. A similar argument was rejected by this Court in District of Columbia v. Colts, 282 U.S. 63 (1930) where the government suggested that the trivial modern day penalties for driving to endanger deprived that offense of its serious common law nature. Also, whatever merit such an argument might have when the combination to impose a boycott is treated in a civil administrative or judicial proceeding, the argument loses

---

42. The two justices who dissented in Bloom did so on the ground that the Court's concepts of due process should not be imposed on a state court proceeding. They apparently agreed that such due process requirements could properly be imposed in a federal court proceeding as in the instant case.

any such merit when criminal sanctions (including constitutionally serious sanctions) are sought to be imposed in a criminal proceeding such as that in the instant case. And it little matters whether that criminal proceeding be labeled as one for "criminal contempt" or an "ordinary crime." For as Justice Black once noted:

> Nor do I take any stock in the idea that by naming an offense for which a man can be imprisoned a "contempt," he is any the less charged with a crime. Frank v. United States, 395 U.S. at 160 (dissenting opinion).

That is also the lesson of Bloom v. Illinois.

When the Philadelphia Cordwainers were tried for combining to raise their wages in 1806, they received a jury trial before being fined $8. When union member Callan was tried for combining to impose a boycott, and fined $25, this Court held, in 1888, that he should have been granted a jury trial upon demand. So too today, where the instant offense also consists of a combination to impose a boycott, resulting in a $25,000 fine, this Court should hold that there was a right to trial by jury, even though the proceeding was nominally for criminal contempt rather than criminal conspiracy. For nothwithstanding the label applied to the proceeding, the underlying conduct is equally serious, and so are the consequences to the offender.[43]

---

43. Apart from the serious common law nature of a combination of workers, and the severity of the actual punishment imposed, there are other objective indications of the "seriousness with which society regards the offense," Baldwin, which also lead to the conclusion that the offense is serious.

The right of workers to combine together is essential to their economic well-being, and constitutes their only effective way of dealing with management from a position of strength. See, e.g. American Steel Foundries v. Tri-City Trades Council, 257 U.S. 184 209 (1921); 29 U.S.C. § 151 Notwithstanding the common law restrictions against such combinations, the right of workers to engage in concerted activities is now recognized as the cornerstone of our national labor policy. See 29 U.S.C. §§ 151, 157.

Moreover, as demonstrated in Argument I, supra, for the last 60 years Congress has recognized that the judiciary's powers of injunction and summary contempt, when abused, constitute a marked threat to labor's right to engage in concerted activities. Congress has therefore limited the courts' jurisdiction to issue labor injunc-

C. *The $25,000 Fine Imposed on Petitioner Union Rendered the Offense Serious, and a Jury Trial Was Therefore Required.*

Whatever difficulties this Court encountered in drawing the line between serious and petty offenses in state court proceedings, there have been no such difficulties in drawing the line for federal court proceedings. For unlike the situation in Duncan, "where the legislature has not addressed itself to the problem," 391 U.S. at 160, Congress has addressed itself to the problem in 18 U.S.C. § 1, and drawn the line at six months imprisonment or a $500 fine. See Duncan, 391 U.S. at 161, see also, Frank v. United States, 395 U.S. at 150, n. 3, 150-1; Cheff v. Schnackenberg,[44] 384 U.S. at 379; In re Union Nacional de Trabajadores, 502 F.2d 113, 116 (1st Cir. 1974); United States v. R.L. Polk & Co., 438 F.2d 377 (6th Cir. 1971).

The judgment that the fine "might have no deterrent or punitive effect at all," 492 F. 2d 936, and is therefore not serious, should be the decision of the legislature and not of the courts.

In criminal contempt proceedings the judge already has the combined powers of judge and prosecutor. In addition, through manipulation of the sentence imposed the judge may also exercise the powers of the jury. But heretofore the sentence could only be manipulated within the limits of the objective standards of 18 U.S.C. § 1. If this Court should adopt the subjective test employed by the court below, the existing possibilities for abuse, noted by this Court in Bloom v. Illinois, 391 U.S. at 202, will be substantially increased. A judge's finding that a particular fine imposed on a union or corporation in excess of $500 is not a deterrent, or not punitive, will be insulated from any meaningful judicial review; for most appellate courts will no doubt conclude, as did the court below, that this finding of fact is not clearly erroneous. 492 F. 2d 937. Amicus submits that such a result should not be permitted unless Congress, rather than this Court, chooses to amend 18 U.S. C. § 1 to adopt the method employed by the court below. Until then, 18 U.S.C. § 1 should be strictly construed as it is written--drawing the petty-serious line for all federal cases at six months imprisonment or a $500 fine. Judged by this objective standard, the alleged offense of petitioner union, resulting in a $25,000 fine, must be deemed serious, and the demand for jury trial should have been granted.

---

tions, except in cases involving specified unlawful conduct; but even then, this power has been carefully regulated and subject to procedural protections such as the right to jury trial upon demand, which eliminates the powers of summary contempt.

Although this Court has sometimes construed these statutes in a narrow manner, e.g. Duplex Printing Press Co. v. Deering, 254 U.S. 443 (1921) and may do so again in the instant case by rejecting the statutory argument (part I, supra,), it is nonetheless apparent that Congress regards labor's alleged participation in unlawful concerted activities as sufficiently serious to warrant trial by jury in most, if not all cases of contempt.

And this has been true even though the punishment imposed in many of these cases, including such celebrated cases as In re Debs, 158 U.S. 564 (1895) (imprisonment of three to six months) and Gompers v. United States, 233 U.S. 604 (1914) (30 days imprisonment and $500 fines), is not serious, even by today's more liberal constitutional standards.

Any punishment imposed on a labor union may be sufficiently serious to tip the delicate, Congressionally-established balance between capital and labor. Labor's ability to engage in concerted activities may be seriously undercut by fines, or even the short imprisonment of union leaders at a crucial point in a strike. See, e.g. Philadelphia Cordwainers' Case, supra, p. 32. Thus in the many instances in which Congress provided procedural protections against summary contempt proceedings, it has done so across the board, without regard to the possible punishment.

44. The court below discussed only one of these three Supreme Court cases indicating that 18 U.S.C. § 1 defines the line between serious and petty offenses in federal proceedings--i.e. Cheff, which admittedly referred only to the period of imprisonment in the statute, but not the fine. 492 F. 2d 936. The court below ignored this far more clearer statement in Frank:

> Therefore, the maximum penalty authorized in petty offense cases is not simply six months imprisonment and a $500 fine. A petty offender may [also] be placed on probation for up to five years ... 395 U.S. 150-151 (emphasis added)

The court below also disregarded similarly clear language in Duncan:

> In the federal system, petty offenses are defined as those punishable by no more than six months in prison and a $500 fine, 391 U.S. 161 (emphasis added).

CONCLUSION

The question before the Court has profound implications: will the historic right to a jury trial for one accused of conduct violating a labor injunction be confined to the fringes of the nation's labor law, or will that right be placed, where it belongs, at the center of the national labor policy?

If the national labor statutes are interpreted to confine the jury right to the now obsolescent forms of injunctions issued under the Norris-LaGuardia Act, the unfairness as well as the appearance of unfairness of judge-tried contempts will arise again. Since the Taft-Hartley injunctions in many cases duplicate those available prior to the Norris-LaGuardia Act, these evils will be as widespread as they were before 1932.

This Court should avoid such a narrow statutory construction because it produces an unconstitutional result. The use of summary contempt to bypass the constitutionally mandated right to jury trial for serious offenses threatens the very basis of the guarantees which in this century have been extended to both labor and to criminal defendants.

In these turbulent times, this Court should extend the statutory and constitutional protection of a jury trial to that narrow range of bitterly contested cases which result in contempt citations under the Taft-Hartley Act. As Senator Walsh said long ago, a jury verdict in such cases "would silence the caviling and strengthen in the minds of the people the conviction that the courts are indeed the dispensers of justice and not engines of oppression."[45]

45. FRANKFURTER & GREENE, THE LABOR INJUNCTION, supra, p. 192.

Supreme Court, U. S.
FILED
JAN 10 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1974

No. 73-1924

JAMES R. MUNIZ AND BROTHERHOOD OF TEAMSTERS AND AUTO TRUCK DRIVERS LOCAL NO. 70, IBTCHWA,
Petitioners,

v.

ROY O. HOFFMAN, DIRECTOR, REGION 20, NATIONAL LABOR RELATIONS BOARD,
Respondent

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF AMICUS CURIAE FOR THE UNITED MINE WORKERS OF AMERICA

JOSEPH A. YABLONSKI
DANIEL B. EDELMAN
PAUL R. HOEBER
900 Fifteenth Street, N.W.
Washington, D. C. 20005
Attorneys for Amicus

INDEX

	Page
INTRODUCTION	1
INTEREST OF AMICUS	2
ARGUMENT	2
I. The Norris-LaGuardia Act was enacted to ensure that no injunction could issue in a labor case without meeting the requirements of the Act. Section 11 of the Act, specifically, provided for trial by jury in all contempt cases that resulted from labor injunctions	3
II. In construing the Norris-LaGuardia Act in its relationship to other federal labor statutes, this Court has consistently applied the Act to the fullest extent compatible with the purpose and effect of any other applicable statute. Section 11 of the Act was clearly compatible with the grant of power to issue labor injunctions under § 10 of the National Labor Relations Act	6
III. When § 11 was recodified as § 3692, the change in language recognized the existence of federal jurisdiction to issue injunctions in labor disputes. The scope of the provision, however, remained the same, and the right to trial by jury remained applicable in all contempt cases resulting from labor injunctions	10
IV. Although it is true that when issuing § 10(1) injunctions, "the jurisdiction of courts sitting in equity" is not limited by the Norris-LaGuardia Act, it does not follow that a resulting criminal contempt case is free from the Act's jury trial requirement	11
CONCLUSION	13

CITATIONS

Cases:

Allen Bradley Co. v. *Local 3, Int'l Bhd. of Elec. Workers,* 325 U.S. 797 (1945)	4, 6
Anderson v. *Bigelow,* 130 F.2d 460 (9th Cir. 1942)	4
Bakery Sales Drivers' Union v. *Wagshal,* 333 U.S. 437 (1948)	4
Boys Markets v. *Retail Clerks Union,* 398 U.S. 235 (1970)	7, 11
Brotherhood of R.R. Trainmen v. *Akron & B.B. R.R.,* 385 F.2d 581 (D.C. Cir. 1967)	7
Brotherhood of R.R. Trainmen v. *Chicago R. & Ind. R.R.,* 353 U.S. 30 (1957)	7
Brotherhood of R.R. Trainmen v. *Toledo, P. & W. R.R.,* 321 U.S. 50 (1944)	7
Elgin, J. & E. R.R. v. *Brotherhood of R.R. Trainmen,* 302 F.2d 545 (7th Cir. 1962)	4
Graham v. *Brotherhood of Locomotive Firemen,* 338 U.S. 232 (1949)	7
Lee Way Motor Freight, Inc. v. *Keystone Freight Lines, Inc.,* 126 F.2d 931 (10th Cir. 1942)	4
Marine Cooks & Stewards v. *Panama S.S. Co.,* 362 U.S. 365 (1960)	3-4
Michaelson v. *United States,* 266 U.S. 42 (1942)	12
Milk Wagon Drivers' Union v. *Lake Valley Farm Products, Inc.,*	

	Page
311 U.S. 91 (1940)	4, 6
National Labor Relations Board v. *Hopwood Retinning Co.*, 104 F.2d 302 (2d Cir. 1939)	12
National Labor Relations Board v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937)	3
New Negro Alliance v. *Sanitary Grocery Co.*, 303 U.S. 552 (1938)	4
Order of R.R. Telegraphers v. *Chicago & N.W. R.R.*, 362 U.S. 330 (1960)	7
Sinclair Refining Co. v. *Atkinson*, 370 U.S. 195 (1962)	6, 9
Teamsters Local No. 886 v. *Quick Charge, Inc.*, 168 F.2d 513 (10th Cir. 1948)	4
Textile Workers Union v. *Lincoln Mills*, 353 U.S. 448 (1957)	7
United Bhd. of Carpenters v. *United States*, 330 U.S. 395 (1947)	5
United Mine Workers v. *Gibbs*, 383 U.S. 715 (1966)	10
United States v. *American Federation of Musicians*, 318 U.S. 741 (1943)	4
United States v. *Hutcheson*, 312 U.S. 219 (1941)	3-4, 6
United States v. *United Mine Workers*, 330 U.S. 258 (1947)	4-6
United States v. *Weirton Steel Co.*, 7 F. Supp. 255 (D. Del. 1934)	5
United States Steel Corp. v. *United Mine Workers of America*, 456 F.2d 483 (3d Cir. 1972)	8
Virginian Ry. v. *System Fed'n No. 40*, 300 U.S. 515 (1937)	7, 11
Statutes:	
Clayton Act:	
Sec. 20	5
Sec. 24	5
Labor Management Relations Act:	
Sec. 208(b)	10
Sec. 301	7, 8, 11
National Labor Relations Act:	
Sec. 2(9)	3
Sec. 2(13)	10
Sec. 10(e)	8-10
Sec. 10(f)	8-10
Sec. 10(h)	8-13
Sec. 10(j)	9-10
Sec. 10(l)	2-3, 9-12
Norris-LaGuardia Act:	
Sec. 1	11
Sec. 6	5, 10
Sec. 7	7-8
Sec. 8	7
Sec. 11	2-3, 5-6, 10-11
Sec. 13(c)	3
Railway Labor Act	6-8, 11
18 U.S.C. § 402	5
18 U.S.C. § 3691	5
18 U.S.C. § 3692	2, 10-11
Miscellaneous:	
Accommodation of the Norris-LaGuardia Act to Other Federal Statutes, 72 Harv. L. Rev. 354 (1958)	3

IN THE

Supreme Court of the United States

October Term, 1974

No. 73-1924

JAMES R. MUNIZ AND BROTHERHOOD OF TEAMSTERS AND AUTO TRUCK DRIVERS LOCAL NO. 70, IBTCHWA,
Petitioners,

v.

ROY O. HOFFMAN, DIRECTOR, REGION 20, NATIONAL LABOR RELATIONS BOARD,
Respondent

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

BRIEF AMICUS CURIAE FOR THE UNITED MINE WORKERS OF AMERICA

INTRODUCTION

The United Mine Workers of America presents this brief in support of petitioners with the consent of counsel for both petitioners and respondent.

Although certiorari was granted with respect to two questions, this brief is addressed solely to the first, viz: whether

petitioners, charged with criminal contempt for the violation of an injunction issued pursuant to § 10 of the National Labor Relations Act, were entitled to a jury trial under 18 U.S.C. § 3692.

INTEREST OF AMICUS

The United Mine Workers of America is a labor union representing 120,000 coal miners in 23 states. Throughout its history the UMWA has been the target of federal court injunctions in cases arising out of labor disputes. Like petitioners, the UMWA is subject to injunctions issued at the behest of the National Labor Relations Board pursuant to § 10 of the National Labor Relations Act. Consequently, the UMWA is particularly interested in protecting the legal rights, including trial by jury, of the accused in criminal contempt proceedings that may grow out of such injunctions.

ARGUMENT

18 U.S.C. § 3692 provides for trial by jury "[i]n all cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute." On its face, this provision is applicable to contempt cases that result from injunctions issued pursuant to § 10(1) of the National Labor Relations Act, for § 10(1) is a law governing the issuance of injunctions in labor cases. The court below, however, held that § 3692 does not apply to such contempts.

The court noted that § 3692 is a recodification of § 11 of the Norris-LaGuardia Act and rejected the argument that the coverage of § 11 was extended beyond its original application when it was recodified into § 3692. Amicus agrees that the coverage of § 11 was not extended when it became § 3692. Yet it does not follow that § 3692 is inapplicable in a contempt case resulting from a § 10(1) injunction. That conclusion would require a demonstration that § 11 did not

apply to such injunctions. Analysis of the various statutes involved, however, reveals that § 11 was intended to and did apply to all labor injunctions, including those authorized by § 10(1).

I.

The Norris-LaGuardia Act was enacted to ensure that no injunction could issue in a labor case without meeting the requirements of the Act. Section 11 of the Act, specifically, provided for trial by jury in all contempt cases that resulted from labor injunctions.

In 1932, the Norris-LaGuardia Act imposed restrictions, both substantive and procedural, upon the issuance of injunctions by federal courts in any case "involving or growing out of a labor dispute."[1] As this Court has stressed, "[t]he language is broad because Congress was intent upon taking the federal courts out of the labor injunction business except in the very limited circumstances left open for federal jurisdiction under the Norris-LaGuardia Act." *Marine Cooks & Stewards* v. *Panama S.S. Co.*, 362 U.S. 365, 369 (1960).

It is important to be clear that the Act did not confer jurisdiction on the courts. No doubt Congress could have achieved its goal by creating jurisdiction in the federal courts to issue injunctions in labor cases under certain circumstances. That, however, was not the method Congress chose.[2] Instead, the Act "was intended drastically to cur-

---

[1] The definition of "labor dispute" in § 13(c) is equivalent to that in § 2(9) of the National Labor Relations Act. See *United States* v. *Hutcheson*, 312 U.S. 219, 234 n. 4 (1941). There can be no question that the present case grew out of a "labor dispute," as defined.

[2] Apparently Congress chose not to grant jurisdiction over labor disputes in order to insure the Act's constitutionality, since the scope of federal power over labor relations was not settled until the constitutionality of the National Labor Relations Act was upheld in *NLRB* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937). See *Accommodation of the Norris-LaGuardia Act to Other Federal Statutes*, 72 Harv. L. Rev. 354, 366 & n. 87 (1958).

tail the equity jurisdiction of federal courts in the field of labor disputes." *Milk Wagon Drivers' Union* v. *Lake Valley Farm Products, Inc.*, 311 U.S. 91, 101 (1940). See *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U.S. 552, 562 (1938).

Consequently, it matters not whether federal jurisdiction is premised upon diversity of citizenship or the presence of a federal question, nor does it matter what sort of substantive cause of action is alleged. Regardless of the jurisdictional predicate or the cause of action involved, if an injunction is sought in a labor case, it cannot be granted unless the requirements of the Norris-LaGuardia Act are met. See, *e.g.*, *Bakery Sales Drivers' Union* v. *Wagshal*, 333 U.S. 437, 442 (1948) (local District of Columbia laws); *Allen Bradley Co.* v. *Local 3, Int'l Bhd. of Elec. Workers*, 325 U.S. 797, 812 (1945) (Sherman Act); *Elgin, J. & E. R.R.* v. *Brotherhood of R.R. Trainmen*, 302 F.2d 545 (7th Cir. 1962) (Railway Labor Act); *Teamsters Local No. 886* v. *Quick Charge, Inc.*, 168 F.2d 513 (10th Cir. 1948) (Chandler Act); *Lee Way Motor Freight, Inc.* v. *Keystone Freight Lines, Inc.*, 126 F.2d 931 (10th Cir. 1942) (Motor Carrier Act). In short, "Congress passed the Norris-LaGuardia Act to curtail and regulate the jurisdiction of courts, not, as it passed the Taft-Hartley Act, to regulate the conduct of people engaged in labor disputes." *Marine Cooks & Stewards* v. *Panama S.S. Co.*, 362 U.S. 365, 372 (1960).

A corollary to that proposition is that the identity of the parties before the court is immaterial. In particular, the Act's restrictions are fully operable when the United States is seeking an injunction in a labor case. See *United States* v. *United Mine Workers*, 330 U.S. 258, 280 & nn. 34-35 (1947); *United States* v. *American Federation of Musicians*, 318 U.S. 741 (1943), *affirming* 47 F.Supp. 304 (N.D. Ill. 1942) (Sherman Act); *United States* v. *Hutcheson*, 312 U.S. 219, 227 (1941) (Sherman Act); *Anderson* v.

Bigelow, 130 F.2d 460 (9th Cir. 1942) (federal receiver); *United States* v. *Weirton Steel Co.*, 7 F.Supp. 255 (D. Del. 1934) (National Industrial Recovery Act); *cf. United Bhd. of Carpenters* v. *United States*, 330 U.S. 395 (1947) (Sherman Act prosecution; § 6 of Norris-LaGuardia Act applicable). In fact, one of the prime evils against which the Act was directed was the abuse of the injunctive process in labor cases by the federal government. *United States* v. *United Mine Workers*, 330 U.S. 258, 277-78 (1947); *id.* at 315-16, 318-19 (Frankfurter, J., concurring in the judgment).

In sum, Congress dealt with the problem of federal court intervention in labor disputes by enacting a statute that controlled the issuance of any injunction in any labor case.[3] Section 11 of the Act, moreover, provided for trial by jury in all cases of contempt "arising under this Act." That language can be misleading if read simplistically. The Act does not confer subject matter jurisdiction, so a case cannot "arise under" it in the sense that cases arise under the statutory grant of federal question jurisdiction. Nor does the Act create any substantive cause of action, so a case cannot "arise under" it in the sense that cases arise under the antitrust laws. In short, cases do not and cannot "arise under" an Act that simply limits the equity powers of courts. But Congress did not enact a nullity when it used the phrase "arising under" in § 11. The draftsman's meaning is abundantly plain. Inasmuch as the Act came into operation whenever a federal injunction was sought in a labor dispute, a contempt case would arise under the Act whenever it resulted from such an injunction.[4] Hence, § 11 guar-

---

[3] Thus the Act entirely superseded § 20 of the Clayton Act. *United States* v. *United Mine Workers*, 330 U.S. 258, 270 (1947).

[4] Section 11, like the rest of the Act, made no exception for suits brought by the federal government. In contrast, § 24 of the Clayton Act provided that the protections of that Act, including jury trial, were not applicable to contempts growing out of suits "brought or prosecuted in the name of, or on behalf of, the United States." See now 18 U.S.C. §§ 402, 3691.

anteed a jury trial to any person charged with contempt for violating an injunction in a labor case.[5]

II.

In construing the Norris-LaGuardia Act in relationship to other federal labor statutes, this Court has consistently applied the Act to the fullest extent compatible with the purpose and effect of any other applicable statute. Section 11 of the Act was clearly compatible with the grant of power to issue labor injunctions under § 10 of the National Labor Relations Act.

The Norris-LaGuardia Act, of course, does not stand in isolation. It is one among the pattern of labor laws that must be melded together in furtherance of the national labor policy. See *Sinclair Refining Co.* v. *Atkinson,* 370 U.S. 195, 217-18 (1962) (Brennan, J., dissenting). In certain situations involving other federal laws, the restrictions of the Norris-LaGuardia Act apply in full force. It is clear, for example, that a major purpose of the Act was to prevent injunctions altogether in the course of antitrust suits against unions. See *Allen Bradley Co.* v. *Local 3, Int'l Bhd. of Elec. Workers,* 325 U.S. 797 (1945); *United States* v. *Hutcheson,* 312 U.S. 219 (1941); *Milk Wagon Drivers' Union* v. *Lake Valley Farm Products, Inc.,* 311 U.S. 91 (1940). But when both the Act (which limits injunctions) and another labor statute (which seemingly authorizes injunctions) bear upon a case their provisions must necessarily be reconciled in order "best to effect the most important purposes of each statute." *Sinclair Refining Co.* v. *Atkinson,* 370 U.S. 195, 224 (1962) (Brennan, J., dissenting).

In cases involving the Railway Labor Act, the Court has been careful to preserve the application of the Norris-LaGuardia Act to the greatest extent possible. When a positive mandate of the Railway Labor Act has been violated,

[5] In *United States* v. *United Mine Workers,* 330 U.S. 258, 269-89 (1947), the Court held that the Norris-LaGuardia Act was not intended to and did not apply when the labor dispute was between the federal government and its own employees. The Act, according to the Court, simply had no application whatever in that situation. It followed, of course, that § 11 did not apply either. *Id.,* at 298.

the courts are empowered to enjoin the violation. *Graham* v. *Brotherhood of Locomotive Firemen,* 338 U.S. 232, 237 (1949); *Virginian Ry.* v. *System Fed'n No. 40,* 300 U.S. 515, 563 (1937). Yet that Act does not prevent application of the "clean hands" provision in § 8 of the Norris-LaGuardia Act. *Brotherhood of R.R. Trainmen* v. *Toledo, P. & W. R.R.,* 321 U.S. 50 (1944); *Brotherhood of R.R. Trainmen* v. *Akron & B.B. R.R.,* 385 F.2d 581 (D.C. Cir. 1967). When a union strikes over matters pending in compulsory arbitration, the court has jurisdiction under the Railway Labor Act to enjoin it, *Brotherhood of R.R. Trainmen* v. *Chicago R. & Ind. R.R.,* 353 U.S. 30, 39-42 (1957), but not when the union's conduct is lawful under the Act, *Order of R.R. Telegraphers* v. *Chicago & N.W. R.R.,* 362 U.S. 330, 338-39 (1960).

The guiding principle of these cases was stated to be that "[t]here must be an accommodation of [the Norris-LaGuardia Act] and the Railway Labor Act so that the obvious purpose in the enactment of each is preserved." *Brotherhood of R.R. Trainmen* v. *Chicago R. & Ind. R.R.,* 353 U.S. 30, 40 (1957). That principle has also controlled the application of Norris-LaGuardia in cases where jurisdiction is predicated upon § 301 of the Labor Management Relations Act. In *Textile Workers Union* v. *Lincoln Mills,* 353 U.S. 448, 457-59 (1957), the Court held that § 7 of the Norris-LaGuardia Act did not apply to a § 301 suit for specific performance of an employer's promise to arbitrate, emphasizing that § 8 of the Act reflected the importance of the congressional policy of settlement of labor disputes by arbitration. This "accommodation process" was continued in *Boys Markets* v. *Retail Clerks Union,* 398 U.S. 235, 250 (1970), where the Court found that "[t]he literal terms of § 4 of the Norris-LaGuardia Act [could] be accommodated to the subsequently enacted provisions of § 301 (a) of the Labor Management Relations Act and the purposes of arbitration."

Thus, in cases under both the Railway Labor Act and § 301, the Court has accommodated the Norris-LaGuardia Act to the purposes and effects of other labor statutes. Yet this accommodation goes no further than is necessary. It has been held, for example, that the provision for attorneys' fees in § 7 of Norris-LaGuardia remains applicable in a § 301 suit. *United States Steel Corp.* v. *United Mine Workers of America,* 456 F.2d 483, 487-89 (3d Cir. 1972). The upshot is that a congressional exemption from the basic anti-injunction provisions of Norris-LaGuardia does not mean exemption from the entire Act.

In 1935, Congress in § 10 of the National Labor Relations Act specifically created jurisdiction in the federal courts to issue injunctions in labor cases. Under § 10(e), the National Labor Relations Board could petition a court of appeals to enforce a cease-and-desist order against an unfair labor practice, while under § 10(f) a "person aggrieved" could petition for review of such an order. In either case, § 10(e) and § 10(f) conferred jurisdiction on the court "to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board."

Inasmuch as these provisions were squarely in conflict with the existing anti-injunction provisions of the Norris-LaGuardia Act, it is not surprising that Congress exempted the jurisdiction conferred by § 10(e) and § 10(f) from the restrictions of the Act. Thus, § 10(h) provided:

> "When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled 'An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes,' approved March 23, 1932 (U.S.C., Supp. VII, title 29, secs. 101-115)."

Section 10(h), then, tracked the language of § 10(e) and § 10(f) and insured that the courts would be able to exercise their newly created equity jurisdiction.

In 1947, the Labor Management Relations Act amended § 10 to create jurisdiction in the federal courts to issue interlocutory injunctions to maintain the status quo at the outset of Board proceedings. Under § 10(j) and § 10(l) the Board could petition a district court for "appropriate temporary relief or restraining order" and for "appropriate injunctive relief" pending the Board's determination of the merits of a dispute. In either case, § 10(j) and § 10(l) conferred jurisdiction on the court "to grant to the Board such temporary relief or restraining order as it deems just and proper" and "to grant such injunctive relief or temporary restraining order as it deems just and proper."

The jurisdictional grants in § 10(j) and § 10(l) thus tracked the language of § 10(e) and § 10(f). Consequently, there was no need to enact a new provision of exemption from Norris-LaGuardia, and § 10(h) was left intact. As the dissent observed in *Sinclair Refining Co.* v. *Atkinson,* 370 U.S. 195, 221-22 (1962) (Brennan, J., dissenting):

> "Section 10(h) of the Act simply lifts the § 4 barrier in connection with proceedings brought by the National Labor Relations Board—in the Courts of Appeals for enforcement of Board cease-and-desist orders against unfair labor practices, and in the District Courts for interlocutory relief against activities being prosecuted before the Board as unfair labor practices. This repeal in aid of government litigation to enforce carefully drafted prohibitions already in the Act as unfair labor practices was, obviously, entirely appropriate, definitely limited in scope, predictable in effect, and devoid of any risk of abuse or misunderstanding."

Section 10(h), then, was designed to protect the jurisdiction granted in subsections (e), (f), (j), and (l) from the anti-injunction provisions of the Norris-LaGuardia Act. It allowed the courts to issue the specified injunctions without meeting the requirements imposed by the Act on the issuance of injunctions. Yet it is obvious that § 10(h) did not purport to render the Act wholly inapplicable.[6] That could have been done easily, just as § 208(b) of the Labor Management Relations Act did it for "national emergencies."[7] Section 10(h), however, speaks only to "the jurisdiction of courts sitting in equity" "[w]hen granting appropriate temporary relief or a restraining order."

Plainly, the application of § 11 of Norris-LaGuardia was wholly compatible with the issuance of injunctions under § 10 of the National Labor Relations Act. Section 11 was intended to apply to any contempt case resulting from any labor injunction. Section 10 injunctions could be issued without meeting the Norris-LaGuardia tests; labor injunctions issued pursuant to other federal statutes might have to meet those tests (e.g., antitrust cases) or they might not (e.g., contract cases). In any resulting contempt case, however, there was a right to a jury trial, for § 11 was meant to apply to any labor injunction that a federal court was empowered to issue.

III.

When § 11 was recodified as § 3692, the change in language recognized the existence of federal jurisdiction to issue injunctions in labor disputes. The scope of the provision, however, remained the same, and the right to trial by jury remained applicable in all contempt cases resulting from labor injunctions.

---

[6] Congress quite evidently did not believe that § 10(h) rendered § 6 of Norris-LaGuardia inapplicable, for the 1947 amendments added § 2(13) to the National Labor Relations Act in order to exclude the operation of § 6 in NLRA cases. *Cf. United Mine Workers* v. *Gibbs*, 383 U.S. 715, 736 (1966) (dealing with §§ 301(e) and 303(b) of the Labor Management Relations Act).

[7] "In any case, the provisions of the [Norris-LaGuardia Act] shall not be applicable."

In 1932, the Norris-LaGuardia Act was able to funnel all labor injunctions through its procedures and requirements by the simple expedient of depriving the federal courts of power to issue such injunctions "except in a strict conformity with the provisions of this Act." § 1. The Act's restrictions were intended to apply fully in every case in which a federal labor injunction was sought. Consequently, § 11, which provides for jury trial of contempts "[i]n all cases arising under this Act," would unavoidably apply to every contempt resulting from a labor injunction. By 1948, however, there were other statutes that had to be taken into account. Both the Railway Labor Act, see *Virginia Ry.* v. *System Fed'n No. 40*, 300 U.S. 515, 563 (1937), and the National Labor Relations Act, in § 10(h), provided for the issuance of labor injunctions in spite of the restrictions of Norris-LaGuardia. Moreover, Congress could always confer jurisdiction on the courts to issue injunctions in additional situations, as indeed this Court would later hold had happened in 1947 with the enactment of § 301 of the Labor Management Relations Act, see *Boys Markets* v. *Retail Clerks Union*, 398 U.S. 235 (1970).

Accordingly, when the jury trial provision was transferred to Title 18, it was natural and useful to spell out its coverage to make clear that it applied, as § 11 had applied, to all cases of contempt arising from labor injunctions. The new language of § 3692 thus acknowledges the existence of a plurality of federal statutes pursuant to which labor injunctions might be sought and states simply that the jury trial safeguard applies "in any case involving or growing out of a labor dispute." In short, in recodifying § 11 as § 3692, the revisers simply clarified its intent in keeping with the existence of more recent statutes.

IV.

Although it is true that when issuing § 10(l) injunctions, "the jurisdiction of courts sitting in equity" is not limited by the Norris-LaGuardia Act, it does not follow that a resulting criminal contempt case is free from the Act's jury trial requirement.

Respondent has noted that § 10(h) of the National Labor Relations Act provides that the jurisdiction of the courts to issue § 10(1) injunctions is not limited by the Norris-La-Guardia Act. From this premise, respondent has argued that "a proceeding to obtain compliance with the injunction should be similarly excepted, since the latter proceeding is simply 'a continuance of the earlier [Section 10(1)] action' and is the final 'step in the enforcement' of the Section 10(1) order. *National Labor Relations Board* v. *Hopwood Retinning Co.*, 104 F.2d 302, 305 (C.A. 2)." Memorandum for the Respondent, p. 20.

There are several short answers to this argument. One is that § 10(h) protects "the jurisdiction of courts sitting in equity" and that this Court has held that a criminal contempt case is "an independent proceeding at law" and thus that a statute requiring jury trial in such a case does not invade a court's equity jurisdiction. *Michaelson* v. *United States*, 266 U.S. 42, 64-65 (1924). Indeed, it is difficult to understand how the requirement of a jury in a criminal contempt case could limit "the jurisdiction of courts sitting in equity," that is, the power of those courts to frame and issue injunctions. It is even more difficult to understand how respondent can characterize a criminal contempt case as "a proceeding to obtain compliance with the injunction." Finally, it bears pointing out that the *Hopwood Retinning* case held that a civil, as distinguished from a criminal, contempt proceeding was "a step in the enforcement" of a court of appeals' order and thus could be instituted by motion served upon counsel. 104 F.2d, at 305.

Of more importance, however, respondent's argument reflects an erroneous approach to the interpretation of labor statutes. As discussed above, these statutes must be accommodated to each other to the greatest extent possible. Section 10(h) expressly protects the power of the courts to issue certain labor injunctions. To go further and conclude

that § 10(h) also prevents a jury trial in criminal contempt cases resulting from those injunctions is not to accommodate the two statutes, but to obliterate one of them.

CONCLUSION

Amicus urges that the judgment of the Court of Appeals be reversed.

Respectfully submitted,

JOSEPH A. YABLONSKI
DANIEL B. EDELMAN
PAUL R. HOEBER

900 Fifteenth Street, N.W.
Washington, D. C. 20005
Attorneys for Amicus

Supreme Court, U. S.
FILED
JAN 10 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1973

No. 73-1924

JAMES R. MUNIZ, ET AL.,

Petitioners,

v.

ROY O. HOFFMAN, Director, Region 20, National Labor Relations Board.

BRIEF FOR THE UNIONS *AMICI CURIAE*

FRANK J. DONNER
ROBERT Z. LEWIS
JAMES G. MAURO, JR.
11 East 51st Street
New York, New York 10022
Attorneys for United Electrical, Radio and Machine Workers of America (UE), *as Amicus Curiae*

WINN NEWMAN
RUTH WEYAND
1126 16th Street, N.W.
Washington, D.C. 20036
Attorneys for International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC, *as Amicus Curiae*

HAROLD I. CAMMER
9 East 40th Street
New York, N.Y. 10016
Attorney for Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, *as Amicus Curiae*

NORMAN LEONARD
1182 Market Street
San Francisco, California 94102
Attorney for International Longshoremen and Warehousemen's Union, *as Amicus Curiae*

JOHN RATCLIFF
MARTHA BERGMARK
ELLIOTT ANDALMAN
224 Second Avenue
Hattiesburg, Miss. 39401
Attorneys for Gulf Coast Pulpwood Association, *as Amicus Curiae*

EUGENE G. EISNER
351 Broadway
New York, N.Y. 10013
Attorney for District 65, Distributive Workers of America, *as Amicus Curiae*

I. PHILIP SIPSER
380 Madison Avenue
New York, N.Y. 10017
Attorney for Local 1199, Drug and Hospital Employees Union, *as Amicus Curiae*

COHEN, GLICKSTEIN, LURIE, OSTRIN AND LUBELL
1370 Avenue of the Americas
New York, N.Y. 10019
Attorneys for Newspaper Guild of New York, Local 3, AFL-CIO, and Local 306, Moving Picture Machine Operators Union, IATSE, AFL-CIO
as Amici Curiae

INDEX

	PAGE
Interest of Amici Curiae	1
Issue Presented	2
ARGUMENT:	
I	3
II	5
III	7
IV	9
CONCLUSION	12

Authorities Cited

CASES:	
Bloom v. United States, 391 U.S. 194 (1968)	10, 11
Boys Market v. Retail Clerks' Union, 398 U.S. 235 (1970)	5
Duncan v. Louisiana, 391 U.S. 145 (1968)	5, 9, 10
Dyke v. Taylor Implement Mfg. Co., 391 U.S. 216 (1968)	10
Frank v. United States, 395 U.S. 147 (1969)	9, 10
Hoffman v. ILWU, Local 10, 492 F.2d 929 (9th Cir. 1974)	11
Michaelson v. United States, 266 U.S. 42 (1924)	7
Union Nacional de Trabajadores, 502 F.2d 113 (1st Cir. 1974)	8, 9
United States v. Hutcheson, 312 U.S. 219 (1941)	5, 8
Williams v. Florida, 399 U.S. 78 (1970)	5

PAGE

Constitutional Provisions and Statutes

Constitution of the United States, Sixth Amendment 2, 10

United States Code, Crimes and Criminal Procedure:

18 U.S.C. Sec. 1 ..... 10, 11

18 U.S.C. Sec. 3692 .....2, 6, 7, 8, 9

United States Code, Labor Management Relations Act:

29 U.S.C. Sec. 102 6

29 U.S.C. Sec. 113 6

29 U.S.C. Sec. 151 6

29 U.S.C. Sec. 152 ..... 1, 6, 8

29 U.S.C. Sec. 160 (j) and (l) 6, 7, 8

Miscellaneous

American Bar Association Proceedings, 49 A.B.A. Rev. 174 (1923) 4

Report of United States Commission on Industrial Relations (1915) 3

Report of Senate Judiciary Committee (70th Cong., 1st Session, 1928) 4

Trial by Judge and Jury, 33 Am. Law Rev. 1899 .. 4

105 Congressional Record 6730 (1959) 8

IN THE

Supreme Court of the United States

October Term, 1973

No. 73-1924

JAMES R. MUNIZ, *et al.*,

Petitioners,

v.

ROY O. HOFFMAN, Director, Region 20, National Labor Relations Board.

BRIEF FOR THE UNIONS *AMICI CURIAE*

Interest of *Amici Curiae*

The *amici curiae* all are labor organizations as defined by the National Labor Relations Act as amended, 29 U.S.C.A. Sec. 152, and together represent approximately one million workers.

The United Electrical, Radio and Machine Workers of America (UE) and the International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC are international labor organizations composed of employees of manufacturers of electronics products and equipment, electrical machinery, appliances and products, machine tools and allied products throughout the United States. The Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO is an international labor organization, composed of employees of manufacturers in the meat-processing industry all over the country. The International Longshoremen and Warehousemens Union, an international labor union, represents warehouse and longshore emloyees in California, Oregon, Washington, Alaska and Hawaii.

The Gulf Coast Pulpwood Association is composed of pulpwood cutters working in Mississippi, Alabama and Florida.

District 65, Distributive Workers of America, represents warehouse, office and processing workers; Local 1199, Drug & Hospital Employees Union, affiliated with the National Union of Hospital and Health Care Employees, AFL-CIO, represents workers in hospital and health care facilities; the Newspaper Guild of New York, Local 306, Moving Picture Machine Operators Union, mercial maintenance, advertising and sales employees of all major newspapers, magazines and other publications; Local 306, Moving Picture Machine Operaators Union, IATSE, AFL-CIO represents projectionists and technicians in theatre chains, local theatres, hotels, educational institutions and airlines. The employees represented by these four last-named unions all are employed in the New York metropolitan area and together number approximately one hundred thousand.

These unions view the decision of the court below as harmful to the interests of their members. They consider that decision an impairment of the right to trial by jury, and especially serious because of its impact on labor disputes.

Issue Presented

May the petitioners, a labor organization and officers thereof, be denied the right of trial by jury when they are charged with criminal contempt for allegedly violating an injunction prohibiting picketing activity in the face of the mandate of the Sixth Amendment to the Constitution of the United States and Section 3962 of Title 18 of the United States Code of Crimes and Criminal Procedure?

ARGUMENT

I.

The *amici* have sought to present argument in this case because the particular issue presented is of vital importance to the working people they represent. It may fairly be said that the right to trial by jury in the context of a labor dispute is a cherished one written into the law after years of bitter struggle. It should not be eroded or denied to working people without the most explicit indication that Congress intended to withhold it.

We need to recall that the attack on the use of the judiciary as an instrument of control of labor disputes was not confined to the *ex parte* issuance of injunctions. A coordinate and possibly more important grievance was the resort to summary contempt. As a result of both of these abuses, working people came to view the judges as partisans of employers and the entire equity procedure which resulted in summary contempt as an illegitimate mode of governance of labor disputes.

This bitterness and anger come through in the Proceedings and Report of the United States Commission on Industrial Relations (1915). For example, S.S. Gregory, a former president of the American Bar Association, testified (at p. 53), that the denial of a jury trial in contempt cases "has been an injustice that has rankled in the minds of everybody . . . and justly so." In the same way, Judge Walter Clark, a highly respected Chief Justice of the Supreme Court of North Carolina, testified that the effect of the injunction system had been "to irritate the men because they feel that every man has a right to a trial by jury, and that to take him up and compel him to be tried by a judge is not in accordance with the principles of equality, liberty and justice." He added that this form of summary justice had been one of the causes of social unrest

in the United States and would increase such unrest unless remedied. In a speech before the American Bar Association Senator Pepper of Pennsylvania said:

> "To the striker it seems like tyranny to find such vast power exercised—not by a jury of one's neighbors—but by a single official who is not elected but appointed, and that for life."
>
> —49 A.B.A. Rep. 174, 177.

An attorney familiar with the problems of working people testified before the Senate Judiciary Committee (70th Cong, 1st Sess., 1928, at p. 159):

> "Now, this contempt feature, of course, is the real power back of the injunctions because it is a power that is exercised by a single individual . . . Above all else, the person determining the contempt is the very person whose order has been disobeyed. That seems to me to be intrinsically an anti-social position for any man to be in. He lays down the order and naturally his pride is more hurt than anybody else on earth if his own order is disobeyed."

In a speech which inspired widespread reaction at the time, Judge Henry Clay Caldwell said of contempt punishments in labor disputes:

> "In proceedings for contempt for an alleged violation of the injunction, the judge is the lawmaker, the injured party, the prosecutor, the judge and the jury. It is not surprising that uniting in himself all these characteristics he is commonly able to obtain a conviction."
>
> —"Trial by Judge and Jury," 33 Am. Law Rev. 1899, pp. 321, 327, 328.

The background of protest against summary contempt sanctions is unified by a pervasive sense that such punishment was "class justice" because it denied its victims peer judgment. It might be said that speed required *ex parte* intervention, but no such justification could support summary punishment. The objection to the mode of punishment, it is fair to say, had, and indeed still has, a broader civic thrust than to the summary issuance of the injunction. This is reflected both in the legislative history of the Norris-LaGuardia Act detailed by the petitioner and in the fact that statutory therapy is separately provided for in Section 1.

Finally, the courts have recognized, with growing insistence, that the jury is a primary bulwark against precisely the sort of arbitrary action which gave rise to the guarantee of jury trials in contempt proceedings involving labor disputes. See *Duncan* v. *Louisiana*, 391 U.S. 145, 156 (1968); *Williams* v. *Florida*, 399 U.S. 78, 100 (1970).

II.

It is now no longer open to question that Congressional legislation dealing with labor, labor disputes, the right to collective bargaining and other forms of concerted activities and mutual aid which arise out of the modern industrial process are not to be read separately or discreetly, one measure in isolation from a predecessor or successor. In the course of regulating disputes Congress has fashioned what may be properly called a labor code. Each statute must be read if at all possible so as to harmonize with other legislation covering adjoining ground so that a coherent structure emerges with each part in either a supporting or re-enforcing role. *United States* v. *Hutcheson*, 312 U.S. 219 (1941); *Boys Market* v. *Retail Clerks' Union*, 398 U.S. 235 (1970).

It is hardly necessary to strain in order to forge such a linkage between the Norris-LaGuardia Act and the National Labor Relations Act as amended. It will not do to

say that the earlier statute deals with private rights and the later one with public rights. They both seek to protect the very same interests. Section 102 of the Norris-LaGuardia Act expressly states the Congressional policy which the Act implements as the protection of freedom of association, self-organization, free choice of bargaining representatives, and freedom to negotiate the terms and conditions of employment. In addition, the Act was intended to shield "other concerted activities for the purpose of collective bargaining or other mutual aid or protection. . . .". In the same way, the findings and declaration of policy in the National Labor Relations Act as amended (29 U.S.C. 151), protects precisely the same range of employee interests.

Similarly, the most important single operative term in both laws is the definition of a labor dispute. A comparison of 29 U.S.C. 152 (9) with 29 U.S.C. 113(c) makes it clear that the labor statute lifted this operative definition from the earlier one. Moreover, not only are these two provisions to be read in *pari materia,* but it is clear that if the facts of a case establish a labor dispute within the meaning of the Norris-LaGuardia Act, they also spell out a labor dispute within the meaning of Section 152.

The question before the Court, whether 18 U.S.C. 3692 preserved the right of trial by jury in contempt cases arising from labor disputes, and insulated it from the reach of Section 10 of the National Labor Relations Act, as amended, is illuminuted by two additional considerations. The primary purpose of 10(h) is considerably narrower than the broad language used in the 1947 10(j) and (l) provisions. That purpose was merely to avoid the delay occasioned by lengthy hearings and litigation. They embody the determination of Congress that unfair labor practices may give rise or tend to give rise to such serious and unjustifiable interruptions to commerce as to require their discontinuance pending the Board's adjudication on the merits, to avoid irreparable injury to the policies of

the Act and frustration of the statutory purpose which otherwise would result. The injunctive relief contemplated is interlocutory to the final disposition of the unfair labor practice matters pending before the Board and is limited to such time as may expire before the Board tenders its final decision.

But to accord Respondents in 10(j) and 10(l) cases the right to a jury trial in contempt proceedings would not frustrate the purpose of speedy adjudication. Moreover, the injunctive process is not seamless or unitary. The application for and granting of an injunction is an altogether separate proceeding from a contempt action for its alleged violation. See *Michaelson* v. *United States,* 266 U.S. 42 (1924). This is seen most clearly by the fact that the contempt provisions of the Norris-LaGuardia Act was separated from the other portions of the statute and recodified in 18 U.S.C. 3692, to which we now turn.

III.

When the Taft-Hartley Act was passed in 1947 it raised a storm of objections among labor people. It was the first statute since the passage of the Norris-LaGuardia Act which revived the abuse of the labor injunction against unions. For the first time in fifteen years district courts were authorized to issue injunctions at the instance of the Labor Board against labor unions under Sections 10(j) and (l) of the Taft-Hartley Act.

In 1948 Congress removed the summary contempt provisions of the Act and incorporated them in a blanket provision, Title 18, Section 3692. This new enactment provides in pertinent part as follows:

> "In all cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute, the accused shall enjoy the right to a speedy and public trial

by an impartial jury of the State and district wherein the contempt shall have been committed."

On the face of it, this statute governs injunctions of the kind here in issue. This is clearly a case of alleged contempt which arises under the laws of the United States governing the issuance of injunctions in labor disputes. The 1948 enactment, passed one year after the Taft-Hartley measure expressly covers Taft-Hartley injunctions, for Sections 10(j) and (l) incontestably are laws governing the issuance of injunctions in labor disputes. Indeed the Taft Hartley Act explicitly defines "labor dispute" in the most comprehensive language. The legislative history of the 1959 Landrum-Griffin Act reenforces this reading of Section 3692. See 105 Cong. Rec. 6730 (1959).

In view of the fact that, as we have shown, the abuse of summary contempt in labor disputes has a long genealogy of substance, the protests of labor unions against the revival of this abuse in the Taft-Hartley Act, the need to give the two statutes a harmonizing reading, the lack of necessity for retention of summary contempt trials to effectuate the purposes of Sections 10(j) and 10(l), and the absence of any functional link between the injunctive and the contempt aspects, why is it proper to construe Section 3692 so as to violate its literal meaning? As the Court has said in related context, "Such legislation must not be read in a spirit of mutilating narrowness." *United States* v. *Hutcheson, supra,* at p. 235.

Finally, we submit that to read an exception into the inclusive language of Section 3692 on the filmy evidence offered by respondent would trivialize the Sixth Amendment of the Constitution.

The contentions we press here are well summarized by the Court of Appeals for the First Circuit in *Union Nacional de Trabajadores, et al.,* 502 F.2d 113, 121 (1974):

> "Our conclusion, that Sec. 3692 requires criminal contempt proceedings stemming from alleged violations of a NLRA injunction to be tried before a jury is, we feel, an appropriate accommodation of the policies which inform the NLRA and Sec. 3692. It leaves the Board full power to request temporary relief and, in the event of noncompliance, to coerce obedience through civil contempt proceedings, without delay or interposition of a jury. But it also leaves available, for the rare case when punitive measures are after the fact, deemed necessary, the historic protection of a jury trial."

IV.

The restrictive reading of the statute urged by respondent would confront this Court with an immediate issue of due process: whether Petitioners' rights to a jury trial were improperly curtailed. We are thus required to examine whether the nature of the charges and punishment entitle the petitioners, wholly apart from the statute, to the protection of a jury trial. The Court has held that where a defendant has been charged with committing a serious criminal contempt, the Sixth Amendment's guarantee of trial by jury applies.

The Court has held that wherever possible the test of the applicability of the Sixth Amendment protection falls on "objective indications of the seriousness with which society regards an offense." *Frank* v. *United States,* 395 U.S. 147 (1969). The Court has further ruled that the most important criterion in a conventional contempt case is the severity of the maximum authorized penalty rather than the penalty actually imposed. See, for example, *Duncan* v. *Louisiana, supra.* Similarly, where the maximum penalty for criminal contempt is prescribed by statute, the Court must look to the statutory authorization for the purpose of determining whether the contempt was a serious offense entitling the alleged contemnor to a jury

trial. *Dyke* v. *Taylor Implement Mfg. Co.*, 391 U.S. 216 (1968). Congress has indicated in 18 U.S.C. Sec. 1(3) that a fine in excess of $500 is a punishment for an offense not "petty" in character. But even without reference to 18 U.S.C. Sec. 1, we submit that the long and shameful history of summary contempt in labor disputes, and indeed, the fact that Congress saw fit to apply legislative therapy to this abuse, are in themselves conclusive and "objective indications of the seriousness with which society regards [the offense]." See *Frank* v. *United States*, *supra*.

It is hardly necessary to insist that a prosecution for criminal contempt places the alleged offender in serious jeopardy because what is basically involved is the authority of the Court. By denying the right to a jury trial in any case of criminal contempt, the Court is sitting in judgment on its own actions and is peculiarly subject to those human pulls and pressures which create the danger of arbitrary action. This danger was well expressed in *Bloom* v. *United States*, 391 U.S. 194, 202 (1968):

> "Indeed, in contempt cases an even more compelling argument can be made for providing a right to jury trial as a protection against the arbitrary exercise of official power. Contemptuous conduct, though a public wrong, often strikes at the most vulnerable and human qualities of a judge's temperament. Even when the contempt is not a direct insult to the court of the judge, it frequently represents a rejection of judicial authority, or an interference with the judicial process or with the duties of officers of the court."

If the Sixth Amendment's guarantee of trial by jury truly does reflect a "reluctance to entrust plenary powers over the life and liberty of the citizen to one judge or to a group of judges," *Duncan* v. *Louisiana*, *supra*, there is no case more appropriate for the invocation of that guarantee than a prosecution for criminal contempt.

This is particularly so, since it is now recognized that submitting contempt cases to juries will not "handicap the effective functioning of the courts." *Bloom* v. *Illinois*, *supra*. The constitutional right of trial by jury, it is submitted, should extend to all cases of criminal contempt.

A federal court is not free to fix on its own the point in the penal spectrum at which the constitutional right to a jury trial is activated. The Congressional statute must govern. Title 18 U.S.C. Sec. 1(3) draws the line which separates petty and serious offenses—six months' imprisonment, $500 fine or both. It will not do to say that its fixed character makes it arbitrary—that is true of every fixed standard. Nor that what may be "serious" for one contemnor may be a wrist-pat for another. It means little to assure a defendant in a serious criminal case that he is entitled to a trial by jury, to recognize that in criminal contempt cases the hazard of arbitrary action strengthens the claim to a jury trial and then, as here, to permit a court to decide *ex cathedra* that the punishment, a $25,000 fine, was not serious enough because it "might have no deterrent or punitive effect at all." *Hoffman* v. *ILWU Local 10*, 492 F.2d 936. But if the line is to be redrawn at some other point, or if a distinction is to be made between unions as entities and their members, a court whose powers are directly involved should hardly be entrusted with such responsibilities.

CONCLUSION

For all of the above reasons this Court should reverse the decision below and rule that Petitioners are entitled to a jury trial.

Dated: January 9, 1975

Respectfully submitted,

FRANK J. DONNER
ROBERT Z. LEWIS
JAMES G. MAURO, JR.
11 East 51st Street
New York, N.Y. 10022

WINN NEWMAN
RUTH WEYAND
1126 16th Street, N.W.
Washington, D.C. 20036

HAROLD I. CAMMER
9 East 40th Street
New York, N.Y. 10016

NORMAN LEONARD
1182 Market Street
San Francisco, California 94102

JOHN G. RATCLIFF
MARTHA BERGMAN
ELLIOTT ANDALMAN
224 Second Avenue
Hattiesburg, Miss. 39401

EUGENE G. EISNER
351 Broadway
New York, N.Y. 10013

I. PHILIP SIPSER
380 Madison Avenue
New York, N.Y. 10017

COHEN, GLICKSTEIN, LURIE, OSTRIN AND LUBELL
1370 Avenue of the Americas
New York, N.Y. 10019
Attorneys for Amici Curiae

Supreme Court, U. S.
FILED
JAN 9 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1924

JAMES R. MUNIZ and BROTHERHOOD OF TEAMSTERS AND AUTO TRUCK DRIVERS LOCAL NO. 70, IBTCHWA,

Petitioners,

v.

ROY O. HOFFMAN, Director, Region 20, National Labor Relations Board,

Respondent.

BRIEF OF THE UNION NACIONAL DE TRABAJADORES AS *AMICUS CURIAE*

NANCY STEARNS
c/o Center For Constitutional Rights
853 Broadway
New York, N. Y. 10003
(212) 674-3303

Attorney for Amicus

Adams Press Corp., 130 Cedar Street, N. Y.—Beekman 3-1050-51

INDEX

	Page
Statement of Interest of Amicus----	2
Summary of Argument----------	5
Argument----------	10
Introduction----------	10
I. THE HISTORY OF THE GUARANTEE OF A JURY TRIAL FOR LABOR CONTEMPTS SUPPORTS THE CONTENTION THAT §3692 IS NOT RESTRICTED TO CONTEMPTS UNDER THE NORRIS-LAGUARDIA ACT----------	12
A. Statutory Background of 18 U.S.C. §3692----------	12
B. The Legislative History of The Original Jury Guarantee In The Norris-LaGuardia Act----------	15
C. The Historical Context of §3692 Indicates The Jury Guarantee Was Intended To Apply To Taft-Hartley Contempts----------	22
II. THE ANALYSIS OF THE COURT BELOW DOES NOT PROVIDE ADEQUATE BASIS FOR ITS CONCLUSION THAT §3692 DOES NOT APPLY TO TAFT-HARTLEY CONTEMPTS	26
A. The Provision Of A Jury Trial For Criminal Contempts Arising Under Taft-Hartley Would Not Interfere With The Court's Equity Power----------	26

Page

B. The Cases Relied On By The Court Below Are All Distinguishable And Provide Insufficient Foundation For Its Opinion---------- 29

III. THE TAFT-HARTLEY ACT DEALS WITH LABOR DISPUTES---------- 36

CONCLUSION---------- 38

AUTHORITIES CITED

Page

Cases

Bakery Sales Drivers Local Union No. 33 v. Wagshal, 333 U.S. 437 (1948).....31, 33

Brotherhood of Local Firemen and Enginemen v. Bangor and Aroostook R.R. Co., 380 F.2d 570 (D.C.Cir. 1967), cert. den. 389 U.S. 327 (1967).....29, 30, 34, 35

Building and Construction Trade Council of Met. Dist. v. Alpert, 302 F.2d 594 (1st Cir. 1962).30, 31, 33

Curtis v. Loether, __U.S.__, 94 S.Ct. 1005 (1974).....40

Duncan v. Louisiana, 391 U.S. 145 (1968).....39

Hoffman v. Longshoremen and Warehousemen, Local 10, 492 F.2d 929 (9th Cir. 1974).....6, 26, 38

Madden v. Grain, Elevator, Flour & Feed Mill Workers, 334 F.2d 1014 (7th Cir. 1964).....9, 12, 29, 30, 32 passim

NLRB v. Red Arrow Freight Lines, 193 F.2d 979 (5th Cir. 1952).....21, 29, 31, 33, 34

Pernell v. Southall Realty, __U.S. __, 94 S.Ct. 1723 (1974).....40

Schauffler v. United Association of Journeymen, 230 F.2d 572 (3rd

Page

Cir. 1956), 352 U.S. 825 (1956)..29, 30, 34

In re Union Nacional de Trabajadores, 502 F.2d 113 (1st Cir. 1964).3, 6, 8, 9, 12, passim

United States v. J.B. Williams, __F.2d__, 42 L.W. 2606 (2nd Cir. 1974).....40

Constitutions and Statutes

United States Constitution, Fifteenth Amendment.....15

Constitution of Puerto Rico, Art. II.....2

Clayton Act, 29 U.S.C. §52 et seq.....20

National Labor Relations Act, 29 U.S.C. §151 et seq.....24

Taft-Hartley Act.....3, 6, 7, 8, 10, passim

Wagner Act.....23

Norris-LaGuardia Act, 29 U.S.C. 101 et seq.....6, 7, 9, 11, 12, passim

18 U.S.C.

§402.....20

§3692.....3, 5, 7, 10, 11, passim

Page

29 U.S.C.

§107.....16

§152.....2, 37

§158.....26

§160.....26, 32, 33

42 U.S.C.

§1995.....22

Congressional Documents

H. Rep. 152, 79th Cong., 1st Sess.....20

H. Rep. 304, 80th Cong., 1st Sess..13, 20, 21

75 Cong. Rec., 72nd Cong., 1st Sess., Feb. 23, 1932, p. 4507.....19

75 Cong. Rec., 72nd Cong., 1st Sess., March 8, 1932, p. 5513.....16

75 Cong. Rec., 72nd Cong., 1st Sess., March 8, 1932, p.5515.....18

103 Cong. Rec., 85th Cong., 1st Sess., June 10, 1957, p.8684.....21

103 Cong. Rec., 85th Cong., 1st Sess., June 10, 1957, p. 8688.....21

103 Cong. Rec., 85th Cong., 1st Sess., June 10, 1957, p. 8707.....22

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 73-1924

JAMES R. MUNIZ and BROTHERHOOD OF TEAMSTERS and AUTO TRUCK DRIVERS LOCAL NO. 70, IBTCHWA,

Petitioners,

v.

ROY O. HOFFMAN, Director, Region 20, National Labor Relations Board,

Respondent.

BRIEF OF THE UNION NACIONAL DE TRABAJADORES AS AMICUS CURIAE.

The Union Nacional de Trabajadores, as amicus curiae respectfully submits the following brief urging that the opinion of the court below regarding the application of 18 U.S.C. §3692 be reversed.

STATEMENT OF INTEREST OF AMICUS

The Union Nacional de Trabajadores (hereinafter UNT) is a labor organization as defined by the National Labor Relations Board as amended, 29 U.S.C. §152, which represents approximately 2,000 workers in various industries throughout Puerto Rico. UNT has vigorously opposed the imposition by the National Labor Relations Board of jurisdiction over Puerto Rican labor relations as contrary to the principles of International Law and even to the Constitution of the "Commonwealth" of Puerto Rico which guarantees Puerto Rican workers the right to strike and to bargain collectively. 1 L.P.R.A. p.240-241, Art.II, see 17 and 18 of the Constitution.

The UNT is currently in the process of defending itself against charges of criminal contempt arising from actions brought against it at the initiation of

the National Labor Relations Board. In those proceedings, UNT made a motion for a jury trial under 18 U.S.C §3692 which was denied by the United States District Court for the District of Puerto Rico. The ruling of the District Court was reversed by the United States Court of Appeals for the First Circuit in a ruling on a petition for mandamus holding that §3692 applies to contempts that arise under the Taft-Hartley Act. 29 U.S.C. 141 et seq. In re Union Nacional de Trabajadores, 502 F.2d 113 (1st Cir. 1974). Neither the National Labor Relations Board nor the United States government sought to appeal the decision of that court.

These criminal contempt charges were initiated by the Board while charges of civil contempt were pending against the Union. Despite the fact that charges of civil contempt were withdrawn because the

injunction in question was being complied with, the Board continues its prosecution of criminal contempt to this day, more than a year after the strike was settled.

This use of the criminal contempt power by the NLRB is merely one example of the Board's effort to harass a union which disputes its jurisdiction.

In recent years there has been a dramatic increase in NLRB action in Puerto Rico. That increase can be expected to accelerate with the increasing number of strikes resulting from the extraordinarily high cost of living in Puerto Rico. In that context, the NLRB is taking on more and more toward unions the role that employers played in the early 1930's - using the judicial process to hamper organizing, as well as to harass political opponents of the Board itself. Therefore, the right, which Congress sought to guarantee,

to a trial by jury in contempts arising out of labor disputes is of special significance to Puerto Rican unions. In addition, as noted above, UNT presently faces charges of criminal contempt and is to be tried by a jury pursuant to the order of the United States Court of Appeals for the First Circuit. Therefore, the ruling of this Court may have a direct bearing on the charges now pending against the Union.

Thus, the UNT submits the following brief in an effort to assist this Court in construing 18 U.S.C. §3692 and the jury guarantee therein.

SUMMARY OF ARGUMENT

The question before this Court is whether the guarantee of a jury trial for contempts arising out of labor disputes as set forth in 18 U.S.C. §3692, is to be applied to <u>all</u> such contempts as

the statute states, or limited to contempts governed by the Norris-LaGuardia Act as the court below held. Hoffman v. Longshoremen and Warehousemen, Local 10, 492 F.2d 929 (9th Cir. 1974). This past summer the United States Court of Appeals for the First Circuit held that the plain wording of the statute must be honored and a jury trial provided for all such contempts including those governed by the Taft-Hartley Amendments to the National Labor Relations Act. In re Union Nacional de Trabajadores, 502 F.2d 113 (1st Cir. 1974).

In 1932, Congress enacted the Norris-LaGuardia Act to protect unions from abusive and devastating injunctions brought against them by employers. An important part of that protective scheme was the guarantee of a jury trial " in all cases

arising under sections 101-115 of this Title in which a person shall be charged with contempt...." 29 U.S.C. §111.

The Taft-Hartley Act was enacted in 1947, giving the National Labor Relations Board the power, previously reserved to (and abused by) employers, to seek injunctions against unions. The Taft-Hartley Act, with its broad and potentially abusive powers for the NLRB was met with a storm of protests by union people.

In 1948, as part of the recodification of the Code of Criminal Procedure, Congress took the particularized Jury Guarantee of the Norris-LaGuardia Act, changed the wording to cover

> ...all cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute...
> 18 U.S.C. §3692

and placed it in Title 18, the general

title covering Criminal Law and Procedure.

There are no Congressional reports or debates to clarify the marked change in language and placement of the jury guarantee. Thus, as the First Circuit recently concluded, even "if this were an ordinary statute such a clear change in language from a restrictive phrasing would negate any inference that the restrictive phrasing was still to be applied." In re Union Nacional de Trabajadores, supra, 502 F.2d at 118. As the First Circuit noted however, this is no ordinary statute. The history of the abusive use of injunctions against the labor movement, coupled with the protest that accompanied the Taft-Hartley Amendments and the new power of the National Labor Relations Board to obtain injunctions against unions, underscore the fact that the change of language in the recodification of the

jury guarantee broadening its scope must be taken at face value.

Very few courts have been called to apply §3692 and until the ruling of the First Circuit this past summer, none had given its construction any detailed consideration. The First Circuit was correct in concluding that neither the opinion of the court below nor that of the Seventh Circuit in Madden v. Grain Elevator Flour and Feed Mill Workers, 334 F.2d 1014 (7th Cir. 1964) "...revealed sufficient analysis underlying [their] conclusion" that §3692 is limited to Norris-LaGuardia contempts "to be preclusive or persuasive," 502 F.2d at 117. Both courts based their conclusions on confusion of the equity power of the court with its power to punish for criminal contempt. Further, Madden, and the other opinions on which the Court below based its conclusions, were

civil actions and therefore irrelevant to the problem of the construction of a statute governing criminal contempt.

Thus, this Court should look to the careful analysis of 18 U.S.C. §3692 by the First Circuit and adopt its conclusions that the jury guarantee, as recodified, applies, as it states, to all contempts arising out of labor disputes including those, such as the contempt at issue herein, governed by the Taft-Hartley Act.

ARGUMENT

INTRODUCTION

One issue before this Court is the interpretation of 18 U.S.C. §3692, which guarantees a jury trial in contempts growing out of labor disputes. That section reads in pertinent part:

> In all cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute, the accused

> shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the contempt shall have been committed.
>
> 18 U.S.C. §3692 (emphasis supplied).

The specific question at issue is whether the jury guarantee applies, as the statute states, to all criminal contempts arising out of labor disputes and in particular, Taft-Hartley Act, 29 U.S.C. §141 et seq. contempts, or whether, contrary to the wording of the statute, the protection of a jury trial is to be restricted to only some contempts, i.e., those arising under the Norris-LaGuardia Act, 29 U.S.C. §101 et seq.

In the first detailed consideration of §3692 by any court, on August 14, 1974 the Court of Appeals for the First Circuit held that §3692 does apply to contempts arising under the Taft-Hartley Act, and is not limited to contempts arising

under the Norris-LaGuardia Act. In re Union Nacional de Trabajadores, supra. In so doing the court expressly rejected the rulings of both the Ninth Circuit, in the case now before this Court, and the Seventh Circuit in Madden v. Grain, Elevator, Flour and Feed Mill Workers, supra as containing insufficient "...analysis underlying the conclusion to be preclusive or persuasive." 502 F.2d at 117.

Amicus urges this Court in construing §3692 to adopt the position of the First Circuit.

I. THE HISTORY OF THE GUARANTEE OF A JURY TRIAL FOR LABOR CONTEMPTS SUPPORTS THE CONTENTION THAT § 3692 IS NOT RESTRICTED TO CONTEMPTS UNDER THE NORRIS LAGUARDIA ACT.

A. Statutory Background of 18 U.S.C. §3692.

The guarantee of trial by jury in a labor contempt was first enacted in 1932 as Section 11 of the Norris-LaGuardia Act.

29 U.S.C. §111. That section provided for a jury trial:

> In all cases arising under Sections 101-115 of this Title in which a person shall be charged with contempt....
> (Emphasis supplied.) 29 U.S.C. §111 superceded.

In 1948, §11 was recodified and placed in Title 18, the Code of Criminal Procedure. The recodification, as stated in H.R. Rep. 304, 80th Cong., 1st Sess., p. A176 made the following changes:

> The phrase 'or the District of Columbia arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute' was inserted and reference to specific sections of the Norris-LaGuardia Act [§§101-115 Title 29, U.S.C., 1940 ed] were eliminated.
> (Emphasis supplied.)

It appears clear from the above that although Congress originally provided for jury trials only in labor contempts arising under Norris-LaGuardia, in 1948, by

omitting reference to that statute and replacing it with general inclusive phraseology, Congress explicitly extended that most important protection to all contempt cases in labor disputes where there was alleged to be a violation of an injunction. Certainly, if Congress had intended to continue to limit jury trials to Norris LaGuardia violations they would have left the provision within that Act, in Title 29, rather than moving it to Title 18, the title covering all criminal procedures. At the very least they would have specifically so limited the statute */

---

*/ Congress plainly knew how to state when the jury provision would not apply, for in §3692 it expressly (and solely) excluded the following:

> This section shall not apply to contempts committed in the presence of the Court or so near thereto as to interfere directly with the administration of justice nor to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders or process of the court.

in order to avoid any possible misconstruction of what by its own terms is a general provision for a trial by jury.

B. The Legislative History of the Original Jury Guarantee in the Norris-LaGuardia Act.

The Norris-LaGuardia Act, of which 29 U.S.C. §111 was but a part, was passed in 1932 as one of the earliest actions of the New Deal to come to the aid of the labor unions which had been plagued by repeated devastating injunctions.

The situation was described by United States Representative Fernandez in House debates in support of the 1932 Act as follows:

> For years the American working people have felt a keen sense of injustice because corporations have resorted to the wrongful use of injunctions in labor controversies and have suffered mentally and materially through what they firmly believe was the unjust application of the injunctive process.
>
> The right to organize is nullified when people are prohibited

> from exercising their economic strength and from appealing to other workers to join with them in a common cause.
>
> Because of the injustices and the abuse of power on the part of some of the Federal judges this legislation was enacted.

75 Cong. Rec., p. 5513, 72nd Cong., 1st Sess., March 8, 1932.

Norris-LaGuardia was enacted to limit the use of the injunctive power which was crippling the unions and therefore materially harming the conditions of American working men and women. The statute set out not only the circumstances but also the procedures under which the injunctive power could be used by the courts.*/

As a further protection from the prevalant heavy-handedness of the anti-labor courts, the Norris-LaGuardia Act included a provision for trial by jury where

---

*/ 29 U.S.C. §107 requires a hearing on notice in open court with the opportunity for defendants to both cross-examine the witnesses against them and present testimony on their own behalf.

contempt of the injunctive order was charged. A jury trial was provided for specifically because the court had been playing the role of grand jury, prosecutor, judge and jury.

As Representative Schneider stated urging the passage of the provision:

> Not only did the terms of these injunctions reach unbelievable proportions in their denial of elementary constitutional and civil rights but the manner in which these injunctions were issued and the proceedings which were brought for their alleged violation were equally high-handed. The judge whose order or decree had been violated, if, in fact, it had been violated--and in many such instances the violation of the decree was the only course a self-respecting American could pursue--became the prosecuting officer, the jury and the judge all rolled up in one.
>
> He was the complainant, he was the prosecutor, he judged the facts without a jury, convicted the accused and sentenced him to jail for contempt of court. And these judges, setting at naught the most precious rights which

ages of progress and struggle had made the heritage of all, expected the people to have anything but contempt for them and their orders.

75 Cong. Rec., p. 5515, 72nd Cong., 1st Sess., March 8, 1932.

Senator Norris, the sponsor of the Act, set forth the reason for a jury in labor contempts most starkly as follows:

> And suppose one of these defendants disobeyed this injunction? He would not be violating any State law! He would be doing only what every human being has a right to do! No statute of any State or the Federal Government would preclude him from giving full publicity to all of the facts. But, under this judge-made law, a new statute was put in force-not by the legislature of the State, not by anyone having authority to enact a statute, but by the judge sitting on the Federal bench.
>
> And let us suppose, too, that for a violation of this order, one of the defendants was arrested. Where would he be tried? Would it be in the courts of the State where the offense is alleged to have been committed? No. It would be before the same judge who made the law. The judge who,

acting as a legislator, made the law. He would sit as a judge to try an offense for violation of the judge-made law. In such a case the defendant would have committed a crime as defined by this arbitrary order of a judge, who is not supposed, under our Constitution and laws, to have any legislative authority. And if, when he was arrested, there was a dispute as to whether he has violated the order of the judge and thus committed a crime, would he have the right to lay his case before a jury of his peers? Would the Constitution and the laws of the State where the alleged offense was committed control in such trial? No. No jury could sit in that case. Who would be the jury? The answer is, the judge--the same person who made the law, the same person who fixes the penalty. He would fix the punishment and would render the judgment, and at his will the defendant would go to jail for a time limited only by the discretion of the same judge.

75 Cong. Rec., 72nd Cong.,1st Sess., February 23, 1932, p. 4507.

In 1948, as noted above, when the criminal code was recodified, the jury provision was removed from the Norris-LaGuardia Act and its wording was altered, changing its coverage from contempts aris-

ing under "Sections 101-115 of this Title" (i.e. the Norris-LaGuardia Act) to "Cases of contempt... involving or growing out of a labor dispute."

There is virtually no legislative history to clarify what Congress intended to accomplish by the change of language. The relevant House Reports merely repeat the wording of §3692 and indicate that it was based on 29 U.S.C. §111 with no explanation or analysis of the changes in the new provision. H.Rep. 152, 79th Cong., 1st Sess., p. A164; H.Rep. 304, 80th Cong. 1st Sess., p. A176. In contrast, there is specific analysis of the changes in another section of Title 18, 18 U.S.C. §402 (contempts constituting crimes) which was based on the Clayton Act and other statutes. There the revisers expressly stated, "'changes in phraseology' ...did not 'change [the] meaning or sub-

stance' or extend the scope of the provision." H.Rep. No. 304, 80th Cong., 1st Sess., p. A30.

Nor does the Congressional Record provide any debate to clarify the recodification of the jury provision.*/

***/ Possibly the only Congressional discussion of §3692 occurs nine years after the fact in debates over the Civil Rights Act of 1957. In those debates, Congressmen Celler and Keating argue that §3692 applied only to Norris-LaGuardia contempts. Of course, debates of an unrelated statute in 1957, making reference to a statute passed nine years earlier, cannot be considered legislative history. Rather they are merely after-the-fact analysis. More important, the major portion of that debate is a passage titled "Jury Trials In Contempt Proceedings With Special Reference To Labor Injunctions" which was inserted in the Congressional Record by both Celler and Keating. That passage was actually excerpted from an NLRB brief in the case of NLRB v. Red Arrow Freight Lines, 193 F. 2d 979 (5th Cir. 1952). See 103 Cong. Rec., pp.8684 and 8688, 85th Cong., 1st Sess., June 10, 1957.**

Finally, Celler and Keating were arguing a narrow reading of §3692 as part of their effort to defeat an amendment which would provide a jury trial for the contempts arising out of violations of the Civil Rights Act of 1957, a totally unrelated statute designed to implement the right of blacks to vote as guaranteed by the Fifteenth Amendment.

For it was feared by Northern Congressmen that if a jury trial were provided for under the Civil Rights Act of 1957, Southern juries (com-

(fn. cont. next page)

Lacking any clear explanation of Congressional meaning and intent in re-writing and codifying §3692, this Court must look to the plain words of the statute and its historical context for its scope and meaning.

C. The Historical Context of §3692 Indicates the Jury Guarantee Was Intended to Apply to Taft-Hartley Contempts.

When the original jury provision in §11 of Norris-LaGuardia, 29 U.S.C.§111, was enacted, only employers were in a position to obtain injunctions against unions. Indeed, §11 was enacted as a safe-

(fn. cont. from preceding page)

posed almost exclusively of whites) would refuse to convict white defendants charged with obstructing the right of blacks to vote because of white supremacy, thereby totally defeating the purposes of the statute. See testimony of Congressman O'Hara, 103 Cong.Rec. 8707, 85th Cong. 1st Sess.

In fact, the importance of the jury trial was recognized by Congress which at least partially rejected their posiiton by enacting 42 U.S.C. §1995 which provides that a person tried and convicted of criminal contempt is entitled to a trial de novo before a jury if he or she received a sentence of more than $300 or more than 45 days in jail.

guard against the abusive nature of those injunctions. With the enactment of the Wagner and Taft-Hartley Acts in 1935 and 1947, the government became empowered to seek injunctive relief against unions. There was tremendous vocal opposition among working people to this new development. With this new power of injunctions came the potential for the government to abuse the power, like the employer had in the past. In 1948, when Congress recodified §3692, and changed the language of §11, which had limited the provision of a jury to cases governed by Norris-LaGuardia, to "all cases of contempt...involving or growing out of a labor dispute," that body was aware that such contempts could now arise under Taft-Hartley. Therefore, it would appear from the very words of §3692, that having increased the situations under which injunctions could be obtained, by passing the National Labor

Relations Act, Congress recognized it must broaden the jury guarantee as well. Thus it provided that if criminal contempt charges should flow from the new NLRB initiated injunctions, defendants would have the same protection of a jury trial which they had in the context of the earlier employer injunctions.

As the Court of Appeals for the First Circuit stated in Union Nacional de Trabajadores, 502 F.2d 113, 118-119 (1st Cir. 1974):

> If this were an ordinary statute such a clear change in language from a restrictive phrasing to a broader one would negate any inference that the restrictive phrasing was still to be applied.
>
> This is, however, not an ordinary statute, but one infused with a national policy arrived at after a painful and lengthy period of strife and debate. Absent any contemporary and significant legislative history, it seems to us entirely plausible that Congress recognized that the conditions which led it to grant authority to the Board to petition for in-

junctive relief would also lead to its not infrequent use. This has, of course, proven to be the case, with Board-requested injunctions now being far more common than those requested by employers.

* * * * *

Indeed, were §3692 to be read as identical in coverage with its predecessor section, the Congress in 1947 and 1948 would have worked the irony of creating a new and more easily obtained kind of labor injunction while, for practical purposes, confining the old jury trial protections to an obsolescing kind of injunction.

II. THE ANALYSIS OF THE COURT BELOW DOES NOT PROVIDE ADEQUATE BASIS FOR ITS CONCLUSION THAT §3692 DOES NOT APPLY TO TAFT-HARTLEY CONTEMPTS.

A. The Provision Of A Jury Trial For Criminal Contempts Arising Under Taft-Hartley Would Not Interfere With The Court's Equity Power.

The opinion of the court below rests on the argument that if §3692 were to provide a jury trial for criminal contempts arising under the Taft-Hartley Act, it would be implicitly repealing the "grants of equitable powers to district courts as embodied in §10(1) of the Act, 29 U.S.C. §160(1)...." */ Hoffman v. Longshoremen & Warehousemen, Local 10, supra, 492 F.2d at 934.

*/ 29 U.S.C. §160(1) provides that a district court can enter injunctive relief, temporary or preliminary, pending the adjudication of a charge filed by the National Labor Relations Board when an unfair labor practice has been committed within the meaning of 29 U.S.C. §158(b)(4)(A), (B) or (C); §158(b), §158(e), or §158(b)(7).

The basic flaw in the analysis of the court below is that it incorrectly confuses the equity and criminal jurisdictions of the district court. For the power of the district court to enter injunctive relief pending adjudication of alleged unfair labor practices is unaffected by the availability of a jury trial for charges of criminal contempt. Only the court's power to punish for alleged violations of such an injunction is involved in §3692.

As the United States Court of Appeals for the First Circuit stated in its opinion in Union Nacional de Trabajadores, supra,

> What we are dealing with in this case is the question of punishment after the event, not a proceeding which will interrupt or delay enforcement

of injunctions. */
502 F.2d at 119.

The Court went on,

> We find it difficult to think of a Court sitting to mete out punishment for past offenses as a court 'sitting in equity.' Criminal contempt proceedings can arise from proceedings begun either in law or equity. While 'contempt' generically may 'sound in' equity, a criminal contempt proceeding really stems from the inherent power of a court, not merely a Chancellor, to vindicate its authority. It is sui generis. United States v. Barnett, 346 F.2d 99 (5th Cir., 1965). The very fact that §3692 is now placed under Title 18, Crimes and Criminal Procedure, adds to our conviction that proceedings thereunder cannot be equated with proceedings before a court specifically described as 'sitting in equity.' 502 F.2d at 120.

---

*/ The First Circuit also noted in response to an NLRB contention that a judge trial was necessary for a Taft-Hartley contempt because of the complexity of the issues before the Court, "This involves nothing of the kind of expertise which is supplied by the Board in determining whether or not an act constitutes an unfair labor practice. It involves only the determination, whether individuals or groups did in fact disobey, with requisite knowledge and intent, a court order so as to impose criminal sanctions. 502 at 119.

B. The Cases Relied On By The Court Below Are All Distinguishable And Provide Insufficient Foundation For Its Opinion.

The opinion below relies on the cases of Brotherhood of Local Firemen and Enginemen v. Bangor and Aroostook R.R. Co., 380 F.2d 570, 580 (D.C. Cir., 1967), cert. den. 389 U.S. 327 (1967); Madden v. Grain Elevator, Flour and Feed Workers, 334 F. 2d 1014, 1020 (7th Cir., 1964) and secondarily on Schauffler v. United Association of Journeymen, 230 F.2d 572 (3rd Cir. 1956), cert. den. 352 U.S. 825 (1956) and NLRB v. Red Arrow Freight Lines, 193 F.2d 979 (5th Cir., 1952). The Court itself concedes that the above cases are civil cases (and, therefore, presumably not controlling). The First Circuit, in Union Nacional de Trabajadores, notes that Madden and the opinion of the Court below are the two main cases dealing with appli-

cation of §3692 and makes short shrift of both, stating:

> Neither case, in our opinion, revealed sufficient analysis underlying the conclusion to be preclusive or pervasive. Maddensimply states a conclusion, while, as we note below, Hoffman's fear of any limitation on the Board's equitable powers is misplaced. 3/
>
> 3/ The cases cited by Madden and Hoffman merely deal with the question of the jurisdiction of the courts to issue injunctions, not the scope and applicability of §3692. See, e.g., Building Construction Trades Council v. Albert, 302 F.2d 594, 598 (1st Cir., 1962).
> Union Nacional de Trabajadores, supra, 502 F.2d at 117.

Looking more closely at the cases relied on below we see that both Brotherhood of Local Firemen & Enginemen and Schauffler rely on Madden. We will therefore begin our analysis with that case.

Firstly, Madden v. Grain Elevator, Flour & Feed Mill Workers, supra, was

a civil, not a criminal, contempt and therefore the jury provisions regarding contempt embodied in the Code of Criminal Procedure did not apply. Further discussion of whether §3692 applied in Taft-Hartley cases was therefore only dicta. The applicable portion of Madden set forth the question as follows:

> [3, 4] Section 3692 covers matters formerly found in §11 of the Norris-LaGuardia Act. It is inapplicable to a proceeding under the Labor Management Relations Act. This inapplicability is evidenced by §10(h) (29 U.S.C. §160(h) of said Act, which excludes such proceedings as injunction and enforcement from the limitations of the Norris-LaGuardia Act. Bakery Sales Drivers Local Union No. 33 v. Wagshal, 333 U.S. 437, 442, 68 S.Ct. 630, 92 L. Ed. 792 (1948); Building and Construction Trade Coun. of Met. Dist. v. Alpert, 1 Cir., 302 F.2d 594, 596-597 (1962).

In National Labor Relations Board v. Red Arrow Freight Lines, 5 Cir., 193 F.2d 979 (1952), where a charge of contempt of a court of appeals was being considered it was held that respondents were not entitled to a jury trial.

Madden v. Grain, Elevator, Flour & Feed Mill Workers, supra, 334 F.2d at 1020.

In looking to §10(h)[*] of the Taft-Hartley Act for authority for its conclusions regarding §3692, the Seventh Circuit made the same error as did the court below confusing the equity jurisdiction of the court with its power to punish for criminal contempt. Because of this confusion the Court cited as authority for its conclusion §3692 does not apply to Taft-Hartley contempts, two cases which dealt not with the scope of §3692 or even with contempt, but with whether the Norris-La-

---

*/ Section 10(h) states that: When granting appropriate temporary relief or a restraining order, or making or entering a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of the courts sitting in equity shall not be limited by sections 101 to 115 of this title. 29 U.S.C. 160(h).

Guardia Act governed the power of the district court to issue injunctions against secondary boycotts under §10(1) of the Taft-Hartley Act. See Bakery Sales Drivers Local Union No. 33 v. Wagshal, supra and Building and Construction Trade Council of Met. Dist. v. Alpert,[*] supra.

The final case relied on by the Madden court, NLRB v. Red Arrow Freight Lines, 193 F.2d 979 (5th Cir., 1952), related to the unique circumstance of an alleged violation of a charge of contempt of a Court of Appeals order. There the question was not one of §111 versus

---

*/ In finding that the Norris-LaGuardia Act was not applicable to §10(1), the court looked to the express language of §10(1), which provided for injunctive relief "notwithstanding any other provision of law." Building and Construction Trades Council v. Alpert, supra, 302 F.2d at 597. The Madden court obviously did not pay the same respect to the clear language of §3692.

§3692, but whether the Court of Appeals was deprived of jurisdiction over the contempt because it could not provide a jury. Without setting forth the authorities they relied on, the court simply stated:

> Upon full consideration of the authorities and arguments, we find ourselves in agreement with the Board that this is not a contempt proceeding within the meaning of the statute invoked by respondents, so as to require a jury trial, and that there can be no question as to our jurisdiction to proceed with the inquiry, whether in recognizing U.T.E., respondents are in contempt of our directive.
>
> 193 F.2d at 980.

It should be clear from the above that Red Arrow Freight is totally distinguishable from the situation herein and no basis for the Madden court's conclusion that §3692 does not apply to Taft-Hartley contempts.

The other two cases cited by the court below, Brotherhood of Locomotive Firemen and Enginemen, and Schauffler,

are both civil contempts and therefore, as in Madden, their discussion of the applicability of §3692 to criminal contempts arising under Taft-Hartley is at best dicta. Furthermore, in Brotherhood of Locomotive Firemen and Enginemen, after concluding that §3692 was inapplicable to civil contempts, the court merely noted that $3692 was a recodification of §111 and said nothing further. As we have already noted above, that observation ignores the plain changes that were made in the jury provision of the recodification, generalizing the coverage of the section to all contempts in labor injunctions. Finally, both cases base their conclusions on Madden or cases relied on therein.

Thus, none of the cases above can be used as precedent for the question herein, for none are criminal contempts

arising out of labor disputes within the accepted meaning of those words but are either cases of civil contempt or actions over which the Court of Appeals rather than the District Court has original jurisdiction.

III. THE TAFT-HARTLEY ACT DEALS WITH LABOR DISPUTES.

The only question which could possibly remain is whether the charges of criminal contempt in this case arise out of a labor dispute as required by §3692. In the Union Nacional de Trabajadores case, the National Labor Relations Board argued that §3692 does not apply to contempts arising out of the Taft-Hartley Act because the statute allegedly related to unfair labor practices rather than labor disputes.

In considering the question, the First Circuit concluded that the Taft-Hartley

Act does govern labor disputes and that many unfair labor practices grow out of labor disputes. The court discussed the question as follows:

> ...many cases involving an unfair labor practice arise out of a 'labor dispute.' 4/
>
> 4/ Given the broad definition of 'labor dispute' in both 29 U.S.C. §113(C) (Norris-LaGuardia Act) and 29 U.S.C. §152(9) (NLRA) both of which definitions include, inter alia, 'any controversy...concerning the association of representation of persons in negotiating...terms or conditions of employment,' many controversies concerning unfair labor practices would by definition involve or grow out of labor disputes.
>
> We distinguish cases arising out of unfair labor practices from those arising under statutes vesting the government with authority to enforce compliance with more sharply defined federal standards which are not subject to bargaining as in Mitchell v. Barbee Lumber Co., 35 F.R.D. 544 (D.S. Miss., 1964) and In re Piccinini, 35 F.R.D. 548 (W.D.Pa. 1964) (Fair Labor Standards Act).

Finally, we need only to look to the

statement of facts in the opinion below to see that the charges of contempt in this case resulted from an order enjoining an alleged secondary boycott arising out of "a labor dispute [which] had existed between the Journal and San Francisco Typographical Union No. 21 (Local 21), Int'l. Typographical Union, AFL-CIO." Hoffman v. Longshoremen and Warehousemen, Local 10, supra, 492 F.2d at 931.

It should therefore be clear that the charges of criminal contempt here, as well as many others resulting from alleged violations of Taft-Hartley injunctions, arise out of labor disputes as required by §3692.

CONCLUSION

In current labor history criminal contempts rarely, if ever, are governed by the Norris-LaGuardia Act. Rather they result from the application of the Taft-

Hartley Amendments to the National Labor Relations Act.

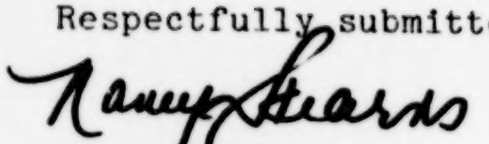
Should this Court construe 18 U.S.C. §3692, which by its terms applies to "any case involving or growing out of a labor dispute," to apply only to Norris-LaGuardia contempts, it would be negating the express changes made by Congress and at best, relegating the recodification of the jury guarantee to a meaningless exercise.

In light of the lack of express legislative history to the contrary, this Court must look to the wording of the statute to determine its scope and application. In so doing, this Court should consider that the concept of trial by jury is one of the most sacred concepts in Anglo-American law. See, e.g., Duncan v. Louisiana, 391 U.S. 145 (1968). In the past term, this Court has recognized the im-

portance of providing trial by jury even in civil cases where Congress or the founders of the United States sought to guarantee this important protection. Pernell v. Southall Realty, __U.S.__, 94 S.Ct. 1723 (1974), Curtis v. Loether, __U.S.__, 94 S. Ct. 1005 (1974). See also, United States v. J.B. Williams Co., __F.2d__, 42 L.W. 2602 (2nd Cir. 5/2/74). Here, where this fundamental safeguard is granted by statute, it should be applied broadly, and not in such a narrow fashion as to make it absolutely meaningless.

Petitioners therefore urge that this Court adopt the position of the First Circuit and rule that §3692 does, as it states, apply to all contempts "involving or growing out of labor disputes" and not merely those governed by Norris-LaGuardia.

Respectfully submitted,



NANCY STEARNS
c/o Center For Constitutional Rights
853 Broadway
New York, New York 10003
(212)674-3303

Attorney for Amicus

Dated: New York, New York
January 8, 1975